

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

FREDRIC RELLER, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) VS. ) SUPERIOR COURT  
 ) CASE NO. BC 261796  
 )  
 ) PHILIP MORRIS, INCORPORATED, )  
 ) A CORPORATION, ET AL., )  
 )  
 ) DEFENDANTS. )  
 )

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
FRIDAY, JUNE 20, 2003  
P.M. SESSION

PAGES 6653 THROUGH 6766, INCLUSIVE

APPEARANCES:

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LINDA BICHE CSR NO. 3359, RMR, CRR  
OFFICIAL REPORTER  
I N D E X

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12:15 P.M..... 6653:7

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NEAL BENOWITZ

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6653

1 CASE NUMBER: BC 261796  
2 CASE NAME: RELLER V. PHILIP MORRIS  
3 LOS ANGELES, CALIFORNIA FRIDAY, JUNE 20, 2003  
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: LINDA BICHE, CSR NO. 3359, RMR, CRR  
7 TIME: 12:15 P.M.

8  
9 - - O - -

10  
11 NEAL BENOWITZ,  
12 WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:  
13 THE COURT: BACK IN THE MATTER OF RELLER VERSUS  
14 PHILIP MORRIS, BC 261796.  
15 THE RECORD SHOULD REFLECT THAT ALL TWELVE  
16 JURORS ARE PRESENT AND THE FOUR ALTERNATES ARE PRESENT.  
17 ALL COUNSEL PREVIOUSLY STATED IS PRESENT.  
18 DR. LEWIS IS PRESENT.  
19 DR. BENOWITZ IS PRESENT IN THE WITNESS STAND.  
20 SIR, YOU'RE STILL UNDER OATH.  
21 OH, MY GOODNESS. I HAVE TO SUBTRACT  
22 45 MINUTES. JUST A SECOND HERE. THIS IS SERIOUS. OH. I  
23 APOLOGIZE.  
24 OKAY. OKAY. THE CLOCK IS TICKING WITH THE  
25 RIGHT TIME ON IT NOW.

26  
27  
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1 DIRECT EXAMINATION (RESUMED)  
2 BY MR. PIUZE:  
3 Q. GOOD AFTERNOON.  
4 A. GOOD AFTERNOON.  
5 Q. JUST BEFORE WE LEFT FOR LUNCH, YOU WERE TALKING  
6 ABOUT YOUR ANSWERING ABOUT RATIONALIZATION AND DENIAL.  
7 DO YOU REMEMBER THAT?  
8 A. YES.

9 Q. HERE'S A LITTLE HYPOTHETICAL QUESTION FOR YOU.  
10 WHAT IF WE HAD AN ADDICTED PERSON -- I'M NOT  
11 EVEN GOING TO TELL YOU WHAT THE PERSON IS ADDICTED TO. WHAT  
12 IF THEY HAD AN ADDICTED PERSON, AND IF YOU'RE RIGHT AND THE  
13 PERSON HAS TO RATIONALIZE WHY HIS OR HER BEHAVIOR IS OKAY OR  
14 IF A PERSON HAS TO BE IN THE DENIAL MODE AS TO WHY THE  
15 CONDUCT ISN'T OKAY, WHAT IF I INVENTED SOME REASONS FOR THAT  
16 PERSON TO KEEP DOING THE CONDUCT?

17 DO YOU THINK THAT WOULD HELP THE PERSON QUIT  
18 THE CONDUCT?

19 A. NO. IF SOMETHING HELPS A PERSON RATIONALIZE,  
20 THAT HELPS THEM KEEP USING THEIR DRUG.

21 Q. WELL, WHAT IF I WAS IN THE BUSINESS OF SELLING  
22 A DRUG AND THE DRUG MAYBE HURT PEOPLE, AND I WANTED TO GIVE  
23 MY CUSTOMERS A RATIONALIZATION TO KEEP USING IT, IF I TOLD  
24 THEM THAT THERE'S REALLY NO PROOF THAT THIS STUFF HURTS YOU  
25 AT ALL, WOULD THAT HELP THEM QUIT?

26 A. NO. THAT WOULD UNDERMINE QUITTING, BECAUSE IT  
27 WOULD RAISE QUESTIONS ABOUT WHETHER HEALTH CONCERNS WERE  
28 REAL.

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1 Q. WHAT IF I WAS IN THE BUSINESS OF SELLING DRUGS  
2 AND I TOLD MY -- AND SUPPOSEDLY THIS STUFF MIGHT HURT MY  
3 CUSTOMERS, AND I TOLD MY CUSTOMERS, THERE'S NO PROOF THAT  
4 WILL HURT YOU, THERE'S NO SCIENTIFIC PROOF, IT'S  
5 CONTROVERSIAL, WE DON'T KNOW IF IT REALLY WOULD HURT YOU,  
6 WOULD THAT HELP THEM STOP USING THE DRUG?

7 A. NO. IT UNDERMINES QUITTING.  
8 MR. PIUZE: YOUR HONOR, I HAVE AN EXHIBIT THAT'S  
9 NO. 16, RIGHT HERE. ROPER PROPOSAL.

10 THE COURT: OKAY. YES.

11 MR. PIUZE: AND FROM THAT, I'VE GOT AN EXTRACT, OR  
12 PART OF IT, THAT WAS SHOWN ON OPENING STATEMENT. BUT NOT  
13 HERE YET.

14 CAN I MAKE THIS 16-A, OR WHAT DO YOU WANT?  
15 THE COURT: THE BOSS SAYS NEW NUMBER AND BOSS WINS.  
16 105. AND THIS IS AN EXTRACT FROM THE ROPER  
17 STATEMENT?

18 MR. PIUZE: FROM THE ROPER PROPOSAL.

19 THE COURT: ROPER PROPOSAL. I'M SORRY.

21 (I.D. 105 - BLOWUP EXTRACT OF ROPER PROPOSAL)

23 Q. BY MR. PIUZE: IF I WAS SELLING A DRUG AND I  
24 WANTED TO GIVE MY CUSTOMERS A RATIONALIZATION TO KEEP USING  
25 IT, IF I TRIED TO CREATE DOUBT ABOUT THOSE HEALTH RISKS,  
26 WOULD I BE GIVING THE SMOKER A RATIONALIZATION TO KEEP USING?

27 A. YES. THE SMOKER WILL TRY TO USE WHATEVER  
28 EVIDENCE HE OR SHE CAN FIND TO KEEP ON USING THE DRUG, TO  
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6656

1 KEEP ON USING NICOTINE. AND RAISING DOUBT ABOUT THE HEALTH  
2 CONCERNS WOULD BE REASSURING TO A SMOKER THAT IT'S NOT  
3 SETTLED NOW, I CAN WAIT UNTIL LATER, I DON'T REALLY HAVE TO  
4 WORRY ABOUT IT. AND YES, IT WOULD UNDERMINE QUITTING.

5 Q. IF -- THIS IS THE ROPER PROPOSAL.  
6 IF -- THIS IS 16, ROPER PROPOSAL, MAY 1, 1972.  
7 IF I AIMED MY MESSAGE AT HEAVY SMOKERS -- IF I  
8 AIM MY MESSAGE OF CREATING DOUBT ABOUT THE HEALTH CHARGE  
9 WITHOUT ACTUALLY DENYING IT WITH HEAVY SMOKERS, WOULD THAT  
10 HELP HEAVY SMOKERS QUIT, OR WOULD THAT GIVE HEAVY SMOKERS A  
11 RATIONALIZATION TO KEEP BEING HEAVY SMOKERS?

12 A. IT WOULD HELP THEM KEEP ON SMOKING. IT WOULD  
13 HELP THEM RATIONALIZE WHY THEY DON'T REALLY NEED TO QUIT NOW.

14 Q. WHAT IF --  
15 YOUR HONOR, I'VE GOT SOMETHING THAT WE HAD  
16 MARKED INTERNALLY AS 733.1.

17 THE COURT: BUT YOU DON'T KNOW IF WE'VE DONE IT HERE.  
18 IS THAT WHAT YOU'RE SAYING?

19 MR. PIUZE: WE HAVE NOT MARKED IT HERE.

20 THE COURT: OKAY. GREAT. IN THAT CASE, YOUR 733.1  
21 IS GOING TO BE OUR --

22 MS. WILKINSON: 106.

23 THE COURT: -- 106. AND THAT IS A SURGEON GENERAL'S,  
24 MEMO ON SURGEON GENERAL'S REPORT.

25 MR. PIUZE: THIS IS A JANUARY 29, 1984 MEMO FROM  
26 WEISSMAN TO CULLMAN, PHILIP MORRIS DOCUMENT.

27 THE COURT: OKAY.  
28

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1 (I.D. 106 - BLOWUP 1-29-84 MEMO)  
2

3 Q. BY MR. PIUZE: WHAT IF A COUPLE OF WEEKS AFTER  
4 THE SURGEON GENERAL'S FIRST REPORT CAME OUT, I OWNED A  
5 COMPANY THAT SOLD A DRUG AND I GAVE SMOKERS A PSYCHOLOGICAL  
6 CRUTCH TO KEEP SMOKING, WOULD THAT BE HELP THEM RATIONALIZE?

7 THE COURT: I DON'T LIKE THE FORM OF THE QUESTION.  
8 SO START OVER.

9 MS. WILKINSON: OBJECTION. ARGUMENT.

10 IT'S FINE FOR CLOSING ARGUMENT, YOUR HONOR, BUT  
11 IT'S NOT APPROPRIATE HERE.

12 THE COURT: MAYBE YOU MISSED ME, MS. WILKINSON. I  
13 HAD ALREADY, ON MY OWN, TOLD HIM THAT THE PRIOR QUESTION WAS  
14 INAPPROPRIATE.

15 MS. WILKINSON: THANK YOU.

16 Q. BY MR. PIUZE: DID I ASK YOU TO TALK TO  
17 MR. RELLER?

18 A. YES.

19 Q. DID YOU?

20 A. YES.

21 Q. WHEN?

22 A. APRIL 15TH OF THIS YEAR.

23 Q. HOW?

24 A. BY TELEPHONE.

25 Q. WHAT DID YOU TALK TO HIM ABOUT?

26 A. ABOUT HIS SMOKING HISTORY.

27 Q. DID HE TELL YOU ABOUT HIS SMOKING HISTORY?

28 A. YES.

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1 Q. WHAT WAS THE PURPOSE OF YOUR CONVERSATION?

2 A. TO MAKE AN ASSESSMENT OF HIS SMOKING HISTORY  
3 AND THE QUESTION OF ADDICTION. IF HE WAS ADDICTED AND TO  
4 WHAT EXTENT.

5 Q. HOW LONG DID YOU TALK TO HIM?

6 A. I THINK FOR ABOUT AN HOUR. I'M NOT SURE. I  
7 DON'T REMEMBER. SOMETHING LIKE THAT.

8 Q. WHILE YOU TALKED TO HIM, DID YOU HAVE IN MIND  
9 SOMETHING CALLED FAGERSTROM TEST?

10 A. YES.

11 Q. WHILE YOU TALKED TO HIM, DID HAVE YOU IN MIND  
12 SOMETHING CALLED DSM-IV?

13 A. YES.

14 Q. WHAT ARE THEY, PLEASE, IN ORDER?

15 FAGERSTROM TEST?  
16 A. THE FAGERSTROM TEST IS A SERIES OF QUESTIONS  
17 THAT -- ABOUT SMOKING BEHAVIOR THAT HAS BEEN USED TO QUANTIFY  
18 THE SEVERITY OF NICOTINE ADDICTION, TO SAY HOW SEVERELY  
19 ADDICTED SOMEBODY IS.  
20 THE DSM-IV IS THE DIAGNOSTIC STATISTICAL MANUAL  
21 VERSION FROM THE AMERICAN PSYCHIATRIC ASSOCIATION.  
22 AND THESE ARE CRITERIA USED TO DIAGNOSE  
23 NICOTINE DEPENDENCE -- OR DRUG DEPENDENCE -- NOT NICOTINE  
24 DEPENDENCE -- DRUG DEPENDENCE.  
25 Q. DOES THE DSM-IV STAY AWAY FROM USING THE TERM  
26 ADDICTION?  
27 A. YES.  
28 Q. NOT JUST IN REGARD TO NICOTINE, BUT IN REGARD  
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6659  
1 TO HEROIN, COCAINE, ALCOHOL, AND EVERYTHING ELSE?  
2 A. YES.  
3 Q. INSTEAD OF ADDICTION, IS THE TERM USED IN THE  
4 DSM-IV DEPENDENCE?  
5 A. YES.  
6 Q. ARE THE DSM-IV CRITERIA THAT ARE LISTED TO BE  
7 USED IN CONJUNCTION WITH ALL DRUG DEPENDENCE NOT JUST  
8 NICOTINE?  
9 A. YES.  
10 Q. IS THE FAGERSTROM TEST TO BE USED JUST IN  
11 CONJUNCTION WITH NICOTINE AND NOTHING ELSE?  
12 A. YEAH, THAT'S VERY SPECIFIC TO SMOKING.  
13 Q. SO WOULD YOU TELL US BASICALLY -- YOU DON'T  
14 HAVE TO GO THROUGH EVERY SINGLE DETAIL -- BUT WHAT MR. RELLER  
15 TOLD YOU THAT YOU THOUGHT WAS SIGNIFICANT.  
16 A. YES. I'VE GOT SOME NOTES HERE THAT I'M GOING  
17 TO USE JUST TO MAKE SURE THAT I CATCH ALL OF IT. THESE ARE  
18 NOTES FROM MY CONVERSATION, AND ALSO HIS DEPOSITION HAD SOME  
19 INFORMATION THAT WAS NOT PART OF MY CONVERSATION WITH HIM.  
20 BUT HE WAS A MAN WHO WAS BORN IN 1939. STARTED  
21 SMOKING AT ABOUT AGE 15, MAYBE 16, AND CONTINUED TO SMOKE  
22 UNTIL THE AGE OF 60 WHEN HE WAS DIAGNOSED WITH HAVING LUNG  
23 CANCER.  
24 HE BECAME A REGULAR, DAILY SMOKER BY THE AGE OF  
25 17.  
26 BY THE AGE OF 21, HE WAS SMOKING A PACK A DAY,  
27 AND THIS INCREASED TO UP TO TWO TO TWO AND A HALF PACKS PER  
28 DAY UNTIL HE STOPPED SMOKING.  
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1 HE STARTED OFF SMOKING PALL MALL, NONFILTER.  
2 HE SWITCHED TO MARLBORO FILTER IN ABOUT 1964,  
3 AND THEN BENSON & HEDGES MENTHOL IN ABOUT 1971 OR 1972.  
4 HE SWITCHED TO MARLBORO FILTERS BECAUSE HE  
5 THOUGHT THEY DELIVERED LESS TAR, AND HE THOUGHT THAT TAR WAS  
6 BAD AND SHOULD HAVE LESS OF IT.  
7 HE REPORTED MULTIPLE QUIT ATTEMPTS FROM  
8 SMOKING, STARTING IN ABOUT 1972 AND GOING UP THROUGH ABOUT  
9 1994. HE ESTIMATED THAT SIX OR SEVEN ATTEMPTS.  
10 THE FIRST ATTEMPT IN 1972, HE TRIED TO QUIT,  
11 BASICALLY, COLD TURKEY. HE STOPPED. HE RELATED THAT THIS  
12 WAS AFTER HE VOMITED SOMETHING THAT HE THOUGHT WAS BLOOD. IT  
13 TURNED OUT NOT TO BE BLOOD. IT TURNED OUT TO BE FOOD, BUT HE  
14 WAS CONCERNED THAT SMOKING WAS BAD FOR HIS HEALTH, AND HE  
15 STOPPED FOR A COUPLE OF DAYS UNTIL HE FOUND OUT WHAT WAS  
16 GOING ON.  
17 IN ABOUT 1975 TO '77, HE ATTENDED A SEVENTH-DAY

ADVENTIST PROGRAM AND STOPPED FOR THREE TO FIVE DAYS.

SUBSEQUENTLY, HE ATTENDED A SMOKENDERS PROGRAM WHICH INCLUDED AVERSIVE SMOKING, WHICH IS A PROCEDURE WHERE PEOPLE ARE ASKED TO SMOKE CIGARETTES AS MUCH AS THEY CAN UNTIL THEY GET SICK. AND THE IDEA IS THAT IF YOU DO THAT SEVERAL TIMES, YOU WILL ASSOCIATE SMOKING WITH FEELING NAUSEATED. HE WENT THROUGH THAT PROGRAM. DID NOT QUIT THEN.

SUBSEQUENTLY, HE WENT THROUGH A TWELVE-STEP PROGRAM, LIKE AN ALCOHOLICS ANONYMOUS-TYPE PROGRAM, FOR CIGARETTE SMOKERS FOR FIVE DAYS. AND HE ALSO HAD EXPERIENCE WITH HYPNOSIS AND ACUPUNCTURE. ALL OF THESE QUIT ATTEMPTS

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FAILED.

HE REPORTED WHEN HE TRIED TO QUIT SMOKING, THAT HE HAD A VERY INTENSE DESIRE TO SMOKE. THAT HE WAS CONSTANTLY THINKING ABOUT SMOKING. THAT HE FELT UNCOMFORTABLE. THAT HE WAS IRRITABLE, RESTLESS, HAD A HARD TIME CONCENTRATING, HAD A HARD TIME SLEEPING, AND STATED THAT HE RESUMED SMOKING AGAIN BECAUSE HE WAS EXHAUSTED FROM FIGHTING THE DESIRE TO SMOKE.

HE ULTIMATELY STOPPED AFTER THE DIAGNOSIS OF CANCER. HE WAS ON OXYGEN FOR SEVERAL WEEKS. HE SAID HE STATED THAT BREATHING WAS MORE IMPORTANT THAN SMOKING, AND FINALLY, HE WAS ABLE TO STOP SMOKING.

HE STATED THAT WHEN HE WAS SMOKING THAT HE NEVER BELIEVED THAT CIGARETTE SMOKING WAS HURTING HIM. THAT HE FELT FINE. AND HE WAS PROMPTED TO CESSATION ATTEMPTS AT THE URGING OF HIS WIFE, WHO HAD SOME CONCERNS ABOUT THE HEALTH PROBLEMS OF SMOKING.

SOME OTHER IMPORTANT ASPECTS OF HIS SMOKING BEHAVIOR. ONE IS THAT HE SMOKED HIS FIRST CIGARETTE WITHIN MINUTES OF AWAKENING IN THE MORNING. HE STATED THAT IT TOOK HIM AS LONG AS IT TOOK TO GET TO THE BACK DOOR, BECAUSE HE SMOKED OUTDOORS. THAT'S IMPORTANT BECAUSE THE TIME FROM AWAKENING TO THE FIRST CIGARETTE IS AN INDICATOR OF HOW ADDICTED YOU ARE. THE MORE ADDICTED YOU ARE, THE SOONER YOU SMOKE.

HE SMOKED STEADILY THROUGHOUT THE DAY. HE HAD TROUBLE NOT SMOKING WHERE SMOKING WAS FORBIDDEN. HE WOULD HAVE TO EXCUSE HIMSELF, SAY, FROM CHURCH, TO SMOKE.  
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HE STATED THAT HE FLEW AIRPLANES LESS WHEN SMOKING WAS BANNED ON AIRPLANES.

HE STATED THAT HE WOULD SMOKE EVEN WHEN SICK WITH A COLD OR THE FLU.

HE WAS ALWAYS CAREFUL TO BE SURE THERE WERE CIGARETTES AROUND FOR HIM TO SMOKE AT HOME AND SAID THAT IF HE RAN OUT, HE WOULD SOMETIMES SMOKE CIGARETTE BUTTS OUT OF THE ASHTRAY, AND SAYS THAT THERE WERE TIMES WHEN HE EVEN SMOKED A STRANGER'S CIGARETTE BUTTS.

AND FINALLY, HE DID HAVE A HISTORY OF ALCOHOL AND VALIUM ABUSE. HE STOPPED IN 1971 WHEN HE JOINED ALCOHOLICS ANONYMOUS. HE STATED THAT HIS URGE TO DRINK AND THE USE OF VALIUM DISAPPEARED OVER TIME, AND HE HAS REMAINED CLEAN AND SOBER FROM 1971 TO THE PRESENT.

HE ALSO NOTED THAT HIS URGE TO SMOKE CIGARETTES NEVER DISAPPEARED, EVEN AFTER HE DID QUIT SMOKING.

AND STATED THAT IT WAS EASIER TO QUIT ALCOHOL AND VALIUM THAN CIGARETTE SMOKING.

AND THAT'S SORT OF A SUMMARY OF WHAT I GOT FROM HIM.

21 Q. DID HE PROVIDE YOU WITH PORTIONS OF HIS  
22 DEPOSITION TESTIMONY?  
23 A. YES.  
24 Q. NOT ALL OF IT?  
25 A. YES.  
26 Q. DID ONE OF THE PORTIONS CONTAIN THE  
27 QUESTION-AND-ANSWER SERIES, WHERE MR. RELLER IN 2003 -- 2002,  
28 2002, SAID HE WAS TRYING TO STOP SMOKING TO MAKE HIS WIFE  
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1 HAPPY, HE DIDN'T THINK IT WAS BAD FOR HIM, SO HE PROBABLY  
2 DIDN'T TRY HARD ENOUGH?  
3 A. YES.  
4 Q. OKAY. NOW TO THE TESTS.  
5 I'M GOING TO PUT THE FAGERSTROM TEST UP ON THE  
6 BOARD HERE AND ASK YOU TO GO THROUGH IT AND FILL IN THE  
7 BLANKS FOR MR. RELLER AND YOUR OPINION OF WHETHER OR NOT HE  
8 WAS ADDICTED.

9 OKAY?  
10 A. YES.  
11 Q. I'LL DO THE SAME FOR DSM-IV.  
12 A. YES.  
13 THE COURT: ARE WE MARKING ANYTHING?  
14 MR. PIUZE: PROBABLY A GOOD IDEA, YOUR HONOR.  
15 THE COURT: 107 NEXT UP.  
16 MR. PIUZE: FAGERSTROM. TOLERANCE QUESTIONNAIRE.  
17 THE COURT: THANK YOU. 107 IDENTIFIED AS A  
18 FAGERSTROM TOLERANCE QUESTIONNAIRE.

19  
20 (I.D. 107 - FAGERSTROM TOLERANCE QUESTIONNAIRE)

21  
22 Q. BY MR. PIUZE: WHY DO YOU EVEN USE THIS ONE, AS  
23 OPPOSED TO -- WE DON'T EVEN KNOW HOW MANY POTENTIAL THINGS  
24 ARE OUT THERE THAT YOU COULD USE?  
25 A. THIS QUESTIONNAIRE HAS BEEN THE MOST WIDELY  
26 USED BY RESEARCHERS STUDYING NICOTINE DEPENDENCE OR NICOTINE  
27 ADDICTION OVER THE YEARS. AND A NUMBER OF RESEARCHERS HAVE  
28 RELATED THIS TO -- PROBLEMS QUITTING SMOKING TO RESPONSE TO  
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1 DRUG TREATMENT.  
2 SO THE HIGHER YOUR FAGERSTROM SCORE, THE LESS  
3 LIKELY YOU ARE TO QUIT, AND THERE'S INTERACTION WITH TYPES OF  
4 THERAPY SO THAT IF YOU ARE A VERY HIGHLY ADDICTED SMOKER, FOR  
5 INSTANCE, YOU NEED HIGHER DOSES OF NICOTINE MEDICATION TO  
6 HELP YOU QUIT THAN IF YOU ARE LESS ADDICTED.

7 Q. OKAY. SO RATHER THAN ME READ EVERY QUESTION,  
8 BECAUSE WE CAN ALL SEE THE QUESTIONS, WHY DON'T YOU JUST GO  
9 THROUGH THE QUESTIONS, TELL US WHAT HE SAID, WHAT HIS SCORE  
10 WAS.

11 A. OKAY.  
12 WELL, THE FIRST QUESTION WAS, HOW SOON AFTER  
13 YOU WAKE UP DO YOU SMOKE YOUR FIRST CIGARETTE?  
14 I MENTIONED THE IMPORTANCE OF THAT BEFORE, AND  
15 HE SAID WITHIN FIVE MINUTES.

16 THE SECOND QUESTION IS, DO YOU FIND IT  
17 DIFFICULT TO REFRAIN FROM SMOKING IN PLACES WHERE IT IS  
18 FORBIDDEN?

19 HE SAID, YES, HE LEFT PLACES THAT HE WAS  
20 SUPPOSED TO BE AT. SO THE ANSWER'S YES.

21 WHICH CIGARETTE WOULD YOU HATE TO GIVE UP MOST?  
22 HE SAID THE FIRST THING IN THE MORNING. THAT'S  
23 A SCORE THERE.

24 HOW MANY CIGARETTES PER DAY DO YOU SMOKE?  
25 HE HAD -- HE SMOKED, THROUGH MOST OF HIS  
26 SMOKING TIME, 26 OR MORE. HE SMOKED A PACK AND A HALF OR  
27 MORE.  
28 DO YOU SMOKE MORE FREQUENTLY DURING THE FIRST  
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6665  
1 HOURS AFTER AWAKENING THAN DURING THE REST OF THE DAY?  
2 AGAIN, THIS IS A SIMILAR QUESTION TO NO. 1.  
3 HIS ANSWER WAS YES, HE DOES.  
4 DO YOU SMOKE IF YOU ARE SO ILL THAT YOU ARE IN  
5 BED MOST OF THE DAY?  
6 YES.  
7 WHAT WAS THE NICOTINE LEVEL OF HIS USUAL BRAND?  
8 HIS WAS BETWEEN 1 TO 1.2 DURING MOST OF THE  
9 TIME. SO THAT'S 1.  
10 AND DO YOU INHALE?  
11 AND HE SAYS ALWAYS.  
12 SO HIS TOTAL 10 IS -- TOTAL SCORE IS 10 OUT OF  
13 A POSSIBLE 11, WHICH IS A HIGHLY ADDICTED, HIGHLY ADDICTED  
14 SCORE.  
15 Q. OKAY. HERE'S 108?  
16 THE COURT: WHAT IS 108 GOING TO BE?  
17 MR. PIUZE: DSM-IV CRITERIA.  
18 THE COURT: 108, DSM-IV CRITERIA.  
19  
20 (I.D. 108 - DSM-IV CRITERIA)  
21  
22 Q. BY MR. PIUZE: JUST TO GIVE YOU A RUNNING  
23 START, DR. BENOWITZ, DSM IS THE DIAGNOSTIC AND STATISTICAL  
24 MANUAL?  
25 A. YES.  
26 Q. COULD YOU PLEASE PUT MR. RELLER INTO THIS  
27 CONTEXT.  
28 A. NOW, FIRST, I NEED TO SAY THAT THIS IS NOT A  
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6666  
1 TEST OF HOW SEVERELY ADDICTED ONE IS. THIS IS JUST WHETHER  
2 YOU ARE DEPENDENTS -- THIS IS WHETHER YOU ARE DEPENDENT OR  
3 NOT. SO IT'S NOT THE SAME PURPOSE AS THE FAGERSTROM.  
4 AND TO BE DIAGNOSED AS DEPENDENT, YOU HAVE TO  
5 BE POSITIVE ON THREE OF THESE DIFFERENT QUESTIONS.  
6 SO THE FIRST ONE IS TOLERANCE. AND ANYONE WHO  
7 IS SMOKING A PACK A DAY OR MORE IS TOLERANT, BECAUSE SMOKERS,  
8 WHEN THEY FIRST START SMOKING CIGARETTES, GET SICK. IT'S  
9 IMPOSSIBLE TO START OUT AS A NEW SMOKER, SMOKING A PACK DAY.  
10 YOU GET NAUSEATED. YOU GET SICK. AND EVERYONE HAS TO  
11 ESCALATE OVER TIME.  
12 TYPICALLY, FOR SMOKERS, IT TAKES SEVERAL YEARS  
13 TO ESCALATE TO THEIR STEADY LEVEL. SO EVERY SMOKER WHO'S  
14 SMOKING A PACK A DAY CERTAINLY HAS DEVELOPED TOLERANCE.  
15 WITHDRAWAL SYMPTOMS -- I MENTIONED A NUMBER:  
16 HIS IRRITABILITY, HIS RESTLESSNESS, HIS SLEEP PROBLEMS, HIS  
17 INABILITY TO CONCENTRATE. HE HAD VERY CHARACTERISTIC AND  
18 PRETTY SEVERE WITHDRAWAL SYMPTOMS.  
19 THE SUBSTANCE TAKEN IN LARGER AMOUNTS ARE OVER  
20 A LONGER PERIOD OF TIME THAN WAS INTENDED. IF ONE TRIES TO  
21 QUIT AND IS UNSUCCESSFUL, THAT MEETS THIS CRITERION.  
22 THE NEXT ONE IS A PERSISTENT DESIRE OR  
23 UNSUCCESSFUL EFFORTS TO CUT DOWN. HE MET THAT AS WELL.  
24 THE NEXT ONE IS A GREAT DEAL OF TIME SPENT IN  
25 ACTIVITIES TO OBTAIN THE SUBSTANCE OR USE THE SUBSTANCE.  
26 THIS ONE IS ACTUALLY MEANT MORE FOR THINGS LIKE ILLEGAL



27 DRUGS, WHERE PEOPLE HAVE TO SPEND TIME GETTING MONEY OR  
28 STEALING THINGS, OR WHATEVER, TO GET THE DRUG.  
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6667

1 FOR SMOKING, IT'S NOT QUITE AS RELEVANT. HE  
2 DID SAY HE ALWAYS WAS CAREFUL TO MAKE SURE HE HAD CIGARETTES  
3 AVAILABLE. I'M SURE HE SPENT TIME DOING THAT OR THINKING  
4 ABOUT IT, BUT THIS ONE IS A LITTLE BIT HARD TO EVALUATE FOR  
5 SMOKERS.

6 IMPORTANT SOCIAL, OCCUPATIONAL ACTIVITIES GIVEN  
7 UP OR REDUCED BECAUSE OF SUBSTANCE USE. CERTAINLY NOT FLYING  
8 WHEN HE WANTED TO FLY BECAUSE OF SMOKING RESTRICTIONS.  
9 HAVING TO LEAVE A CHURCH OR A FILM TO SMOKE A CIGARETTE, I  
10 THINK WOULD QUALIFY FOR THIS.

11 AND THEN THE LAST ONE, SUBSTANCE USE CONTINUED  
12 DESPITE KNOWLEDGE OF OR HAVING RECURRENT PHYSICAL OR  
13 PSYCHOLOGICAL PROBLEMS. I DON'T THINK THIS APPLIES TO HIM.  
14 HE STATED THAT HE DID NOT THINK THAT SMOKING WAS HURTING HIM  
15 UNTIL HE WAS DIAGNOSED AS HAVING CANCER.

16 SO ON THIS CASE, MR. RELLER MET EITHER FOUR OR  
17 FIVE OF THESE CRITERIA. IT TAKES THREE TO BE DIAGNOSED AS  
18 DEPENDENT.

19 Q. SO ON THIS ONE, HE WAS NICOTINE DEPENDENT?  
20 A. YES.  
21 Q. ON THE OTHER ONE, HE WAS HIGHLY NICOTINE  
22 ADDICTIVE?  
23 A. YES.  
24 Q. DO, IN YOUR VIEW, DO SMOKERS' PERCEPTIONS OF  
25 RISK TO THEMSELVES, PEOPLE WHO ARE ADDICTED, DIFFER FROM  
26 NONADDICTED PEOPLE?  
27 A. YES.  
28 Q. WHY?

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6668

1 A. WELL, A COUPLE OF THINGS. ONE IS THAT SMOKERS  
2 WHO KNOW THAT SMOKING IS BAD FOR THEM TEND TO RATE THE RISKS  
3 FROM SMOKING TO BE HIGHER FOR OTHER SMOKERS THAN FOR  
4 THEMSELVES.

5 SO A LOT OF SMOKERS THINK THAT AS LONG AS THEY  
6 ARE FEELING OKAY, THAT THEY'RE NOT HURTING THEMSELVES. THAT  
7 THEY'LL QUIT LATER ON. IN FACT, THIS IS A MAJOR  
8 RATIONALIZATION. PEOPLE SAY, WELL, I'LL WAIT UNTIL SOMETHING  
9 CHANGES, AND THEN I'LL QUIT AND I'LL BE OKAY.

10 UNFORTUNATELY, THE FIRST PRESENTATION COULD BE  
11 A HEART ATTACK OR CANCER.

12 BUT SMOKERS DO THINK THAT THE RISK IS LESS FOR  
13 THEM THAN SOMEBODY ELSE. AND IN GENERAL, SMOKERS TEND TO  
14 UNDERESTIMATE THE RISK OF SMOKING COMPARED TO NONSMOKERS. SO  
15 PART OF IT -- AND THIS IS TRUE FOR ALL ADDICTIONS -- ADDICTS  
16 DON'T THINK THE DRUG IS AS HARMFUL AS OTHER PEOPLE THINK IT  
17 IS.

18 Q. SO WHETHER IT'S HEROIN, COCAINE, ALCOHOL OR  
19 NICOTINE, PEOPLE WHO ARE ADDICTED TO THE SUBSTANCE DON'T SEE  
20 STRAIGHT?

21 A. THEY MAY --  
22 MS. WILKINSON: OBJECT.  
23 THE WITNESS: 00 ACKNOWLEDGE A RISK BUT --  
24 THE COURT: IS YOUR OBJECTION VAGUE?  
25 MS. WILKINSON: YES.  
26 THE COURT: SUSTAINED.

27 Q. BY MR. PIUZE: WHETHER ALCOHOL, NICOTINE,  
28 COCAINE OR HEROIN, THE PEOPLE ARE WHO ARE ADDICTED TO IT  
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1 DON'T SEE WHAT SOMEONE STANDING OUTSIDE WOULD SEE ABOUT THEIR  
2 BEHAVIOR?

3 MS. WILKINSON: OBJECTION. AGAIN, TO VAGUE, AND ALSO  
4 FOUNDATION FOR THAT PARTICULAR QUESTION.

5 THE COURT: DO YOU WANT TO LAY A FOUNDATION FOR THAT,  
6 AS TO WHAT EXPERIENCE?

7 AND I THINK YOU CAN ARTICULATE IT A BIT BETTER.

8 MR. PIUZE: I KNOW I CAN.

9 Q. DOES THE FACT OF THE ADDICTION ITSELF SKEW THE  
10 PERSON'S OBSERVATION OF HIMSELF OR HERSELF?

11 A. WELL, AS I SAID BEFORE, AN ADDICTED PERSON  
12 WANTS TO FIND SOME WAY TO SAY IT'S OKAY TO KEEP ON USING A  
13 DRUG. AND THEY TEND TO FIND ANY ARGUMENTS AGAINST THE DRUG  
14 BEING HARMFUL OR ANY WAYS TO MINIMIZE THE RISK IN THEIR OWN  
15 MIND. AND SO THEY DO MINIMIZE RISK, OR THEY FIND SOME WAY TO  
16 SAY, THIS RISK WILL NOT OCCUR TO ME UNTIL SOME OTHER TIME.  
17 I'LL JUST SMOKE ANOTHER YEAR AND I'LL QUIT. WHATEVER WAY A  
18 PERSON CAN MINIMIZE RISK, THEY WILL TRY TO DO THAT.

19 Q. DO YOU THINK MR. RELLER WAS DOING THAT?

20 A. MOST LIKELY, YES.

21 Q. IF IT TURNS OUT THAT HE WAS DOING THAT, IS HE  
22 IN THE MAJORITY OF ADDICTED PEOPLE, AS FAR AS HIS ACTIONS ARE  
23 CONCERNED?

24 A. YES.

25 MR. PIUZE: I'M DONE. THANK YOU VERY MUCH.

26 THE COURT: YOU'RE DONE TOTALLY?

27 MR. PIUZE: YES, I AM.

28 THE COURT: OKAY.

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6670

1 MS. WILKINSON.

2 MS. WILKINSON: YES. THANK YOU, YOUR HONOR. IT WILL  
3 JUST TAKE US A MINUTE TO GET EVERYTHING COORDINATED, PLEASE.

4 THE COURT: IN THAT CASE, I'LL ENTERTAIN.

5 MS. WILKINSON: I'LL HURRY.

6 THE COURT: OKAY. THANKS.

7 I THINK I JUST GOT SHOT DOWN, FOLKS.

8 MS. WILKINSON: OF COURSE NOT, YOUR HONOR. I'D NEVER  
9 DO THAT.

10  
11 (SHORT PAUSE.)

12  
13 THE COURT: READY TO GO?

14 MS. WILKINSON: I AM. THANK YOU, YOUR HONOR.

15 THE COURT: OKAY.

16  
17 CROSS-EXAMINATION

18 BY MS. WILKINSON:

19 Q. GOOD AFTERNOON, DR. BENOWITZ.

20 A. GOOD AFTERNOON.

21 Q. YOU KNOW, YOU CAN'T COME BACK TO SEE US ON  
22 TUESDAY, RIGHT?

23 A. YES, THAT'S CORRECT.

24 Q. AND WE NEED TO LEAVE BY 2:30 TODAY?

25 A. YES.

26 Q. SO I'LL DO MY BEST TO SPEAK AS SLOWLY AS  
27 POSSIBLE AND ASK YOU THE QUESTIONS AND TRY TO FINISH BY THE  
28 END.

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6671

1 IF YOU COULD DO THE SAME, I'D APPRECIATE IT.

2 A. I APPRECIATE THAT AS WELL. THANK YOU.

3 Q. SURE.  
4 YOU SPENT MOST OF YOUR TESTIMONY TALKING ABOUT  
5 GENERALITIES ABOUT NICOTINE PHARMACOLOGY, RIGHT?  
6 A. YES.  
7 Q. AND THOSE THINGS THAT YOU WERE TEACHING US OR  
8 TALKING TO US ABOUT WERE ABOUT THE GENERAL KNOWLEDGE IN THE  
9 SCIENTIFIC LITERATURE AND MEDICAL COMMUNITY ABOUT WHAT  
10 NICOTINE AND OTHER DRUGS DO TO THE BRAIN AND TO THE BODY,  
11 RIGHT?  
12 A. YES.  
13 Q. AND THAT RESEARCH THAT YOU'VE DONE AND OTHERS  
14 HAVE DONE IS BASED ON ANIMAL STUDIES?  
15 A. YES.  
16 Q. SOME HUMAN STUDIES BUT NOT A LOT, RIGHT?  
17 A. WELL, IT DEPENDS ON WHAT'S ASPECT OF THEM.  
18 MOST OF THE RECEPTOR WORK IS BASED ON ANIMAL STUDIES.  
19 Q. IT'S HARD ETHICALLY TO DO RECEPTOR STUDIES ON  
20 THE HUMAN BRAIN, RIGHT?  
21 A. YES.  
22 Q. AND THAT RESEARCH TELLS US GENERALLY THAT  
23 NICOTINE, YOU SAID, CAN CREATE MORE RECEPTORS, BUT YOU'RE NOT  
24 SURE IT REALLY CREATES MORE RECEPTORS IN THE BRAIN, RIGHT?  
25 A. WELL, IT INCREASES THE NUMBER OF RECEPTOR  
26 BINDING SITES. THAT'S WHAT'S MEASURED.  
27 Q. THAT'S A LITTLE BIT DIFFERENT. THERE'S  
28 RECEPTORS IN THE BRAIN, AND THEN I CALL THEM STICKING PARTS,  
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6672  
1 THESE RECEPTORS THAT ARE BINDING SITES?  
2 A. YES. IT'S NOT CLEAR WHAT THE FUNCTION OF ALL  
3 THESE NEW RECEPTORS ARE. IT IS CLEAR THAT THERE'S SOME  
4 CHANGE IN THE NATURE OF THE BRAIN SO AS BINDING DIFFERENT  
5 AMOUNTS OF NICOTINE.  
6 Q. WELL, LOTS OF THINGS CHANGE THE BRAIN, RIGHT?  
7 A. THAT'S TRUE.  
8 Q. LEARNING CHANGES THE BRAIN?  
9 A. YES.  
10 Q. LOTS OF THINGS THAT HAVE NOTHING TO DO WITH  
11 DRUGS OR DRUGS OF ABUSE CHANGE THE BRAIN, RIGHT?  
12 A. YES. BUT THIS IS A CHANGE THAT OCCURS AS A  
13 CONSEQUENCE OF NICOTINE BEING THERE FOR LONG PERIODS OF TIME.  
14 Q. BUT IF SOMEONE STOPS SMOKING, THERE'S NO  
15 EVIDENCE THAT THOSE INCREASED BINDING SITES DON'T GO BACK TO  
16 A MORE REGULARIZED STATE, CORRECT?  
17 A. THAT'S CORRECT. AND WE DON'T KNOW HOW LONG IT  
18 TAKES IN PEOPLE, BUT IT'S ASSUMED THAT THEY GO BACK TO THE  
19 NORMAL STATE.  
20 Q. SO IT'S NOT A PERMANENT CHANGE IN THE BRAIN,  
21 REGARDLESS OF WHETHER YOU HAVE STOPPED SMOKING IN YOUR LIFE?  
22 A. WELL, THERE ARE SOME THINGS -- IT'S NOT BEEN  
23 CHARACTERIZED AS A PERMANENT CHANGE IN THE BRAIN. BUT THERE  
24 ARE SOME EFFECTS THAT PERSIST.  
25 FOR EXAMPLE, SOMEONE WHO HAS BEEN A SMOKER CAN  
26 START SMOKING AGAIN AFTER MANY YEARS AND VERY MUCH LESS  
27 TOXICITY, SO THEY DON'T GET SICK THE WAY THE FIRST-TIME  
28 SMOKER DOES. SO THERE'S STILL SOME LONG-TERM EFFECTS.  
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6673  
1 Q. I'M SORRY.  
2 A. I'M SAYING THERE ARE SOME LONG-TERM EFFECTS  
3 THAT WE DON'T UNDERSTAND THE BASIS FOR.  
4 Q. BUT THAT'S NOT A PERMANENT CHANGE IN THE NUMBER  
5 OF BINDINGS; IS THAT CORRECT?

6 A. NOT CLEARLY RELATED TO THAT, THAT'S RIGHT.  
7 Q. THAT SOUNDS SERIOUS, WHEN YOU SAY THERE'S  
8 CHANGES IN THE BRAIN. THOSE OF US WHO ARE CIVILIANS, THAT  
9 SOUNDS LIKE A VERY SERIOUS IMPAIRMENT OF THE BRAIN.  
10 THAT'S NOT WHAT YOU'RE SAYING, ARE YOU?  
11 A. WELL, I JUST SAY THE STRUCTURE OF THE BRAIN  
12 CHANGES WHEN A PERSON IS SMOKING CIGARETTES.  
13 Q. RIGHT. AND THE STRUCTURE OF THE BRAIN CHANGES  
14 WHEN PEOPLE DO LOTS OF THINGS?  
15 A. YES.  
16 Q. AND I ASK YOU THAT ONLY BECAUSE WE'RE STILL  
17 TALKING ABOUT GENERALITIES ABOUT PEOPLE IN GENERAL, RIGHT?  
18 A. YES.  
19 Q. WE'RE NOT -- THAT DOESN'T TELL US ANYTHING  
20 SPECIFICALLY ABOUT MR. RELLER?  
21 A. WELL, I THINK IT'S HIGHLY LIKELY THAT THESE  
22 CHANGES WERE SEEN IN HIM.  
23 Q. SURE. BUT IT'S NOT DIFFERENT THAN SOMEONE ELSE  
24 WHO'S A SMOKER AND QUIT, LET'S SAY, BACK IN 1964 WHEN THEY  
25 WERE WARNED BY THE SURGEON GENERAL?  
26 A. THAT'S CORRECT.  
27 Q. RIGHT?  
28 SO IF I PUT TWO PEOPLE UP ON THIS BOARD, AND  
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6674  
1 WE'RE GOING TO ASSUME THEY HAVE THE SAME LIFE CIRCUMSTANCES  
2 LIKE YOU WERE TALKING ABOUT, TWINS, RIGHT?  
3 A. YES.  
4 Q. IDENTICAL TWINS; YOU SAID THAT'S THE BEST  
5 STUDY, RIGHT?  
6 A. WELL, COMPARING IDENTICAL TO NONIDENTICAL  
7 TWINS.  
8 Q. OKAY. SO SINCE WE DON'T -- WE KNOW MR. RELLER  
9 DOESN'T HAVE AN IDENTICAL TWIN, RIGHT?  
10 A. YES.  
11 Q. BUT LET'S ASSUME FOR THIS PURPOSE THAT HE DOES,  
12 AND WE'LL CALL HIM NO. 2 MR. RELLER.  
13 SO WE'RE GOING TO ASSUME HE HAS THE SAME LIFE  
14 CIRCUMSTANCES. OKAY?  
15 A. YES.  
16 Q. FOR PURPOSES OF THIS DISCUSSION.  
17 AND THE THINGS YOU'VE TOLD US SO FAR ABOUT  
18 NICOTINE PHARMACOLOGY AND THE EFFECTS ON THE BRAIN WOULD  
19 APPLY TO MR. RELLER AND, IF HE HAD ONE, HIS IDENTICAL TWIN,  
20 RIGHT?  
21 A. YES.  
22 Q. OKAY. AND IF YOU FOUND OUT WHICH -- WHICH YOU  
23 DID, THAT IN 1955 OR SO, MR. RELLER STARTED SMOKING, RIGHT?  
24 A. YES.  
25 Q. HE STARTED SMOKING THE PALL MALL CIGARETTES?  
26 A. YES.  
27 Q. WHO MAKES THE PALL MALL CIGARETTES,  
28 DR. BENOWITZ?  
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6675  
1 A. I THINK PHILIP MORRIS.  
2 Q. WOULD YOU BE SURPRISED TO FIND OUT THAT IT WAS  
3 BROWN & WILLIAMSON?  
4 A. THAT'S RIGHT. THAT'S RIGHT. THAT'S RIGHT. I  
5 FORGOT. YOU'RE RIGHT. IT WAS ACTUALLY -- YOU'RE RIGHT.  
6 Q. THANK YOU.  
7 IT WAS AMERICAN TOBACCO ORIGINALLY?  
8 A. THAT'S RIGHT. AMERICAN TOBACCO.

9 Q. THEY'VE BEEN BOUGHT BY BROWN & WILLIAMSON?  
10 A. THAT'S RIGHT.  
11 Q. OKAY. NOW, NOTHING THAT YOU KNOW -- YOU KNOW A  
12 LOT ABOUT NICOTINE PHARMACOLOGY, RIGHT?  
13 A. YES.  
14 Q. NOTHING YOU KNOW COULD EXPLAIN IF YOU WERE  
15 LOOKING AT A PARTICULAR SET OF IDENTICAL TWINS WHY SOMEONE  
16 LIKE MR. RELLER MIGHT START SMOKING IN 1955 AND WHY HIS  
17 IDENTICAL TWIN MIGHT NOT, RIGHT?  
18 IF THOSE WERE THE FACTS?  
19 A. THAT'S CORRECT.  
20 WELL --  
21 Q. WE'RE GOING THROUGH A HYPOTHETICAL HERE.  
22 A. YOU HAVE TO LOOK AT THINGS LIKE EXPOSURE,  
23 OPPORTUNITIES AND WHATNOT.  
24 Q. RIGHT. BUT YOU TOLD US THAT THERE WERE TWO  
25 THINGS TO LOOK AT. YOU TOLD US THERE WAS GENETICS, RIGHT?  
26 A. RIGHT.  
27 Q. AND THEN THERE WAS ENVIRONMENT?  
28 A. RIGHT.  
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6676

1 Q. WHAT YOU TRY TO DO IN YOUR STUDIES AND OTHER  
2 PEOPLE DO IS TRY TO CONTROL FOR ENVIRONMENT?  
3 A. RIGHT.  
4 Q. THAT'S WHY YOU USE IDENTICAL TWINS, BECAUSE  
5 YOU'RE ASSUMING THEY HAVE SUBSTANTIALLY THE SAME  
6 ENVIRONMENTAL INFLUENCES, RIGHT?  
7 A. YES.  
8 Q. THAT'S NOT ALWAYS TRUE, BUT THAT'S THE  
9 ASSUMPTION, THE BEST YOU CAN DO IN SCIENCE?  
10 A. YES.  
11 Q. SO LET'S JUST ASSUME THAT MR. RELLER NO. 2  
12 DOESN'T START TO SMOKE IN 1955.  
13 LET'S USE THE FACTS AS YOU KNOW THEM FOR  
14 MR. RELLER.  
15 HE BECAME A REGULAR SMOKER WHEN?  
16 A. BY AGE 21, WHICH WOULD HAVE BEEN ABOUT 1960, I  
17 GUESS.  
18 Q. YOU BELIEVE HE WAS ADDICTED BY 1960, DON'T YOU?  
19 A. YES.  
20 Q. SO WHEN HE WAS SMOKING PALL MALL CIGARETTES IN  
21 1960, ABOUT A PACK A DAY, HE WAS ADDICTED UNDER ANY OF THE  
22 DEFINITIONS YOU DISCUSSED WITH MR. PIUZE, RIGHT?  
23 A. YES.  
24 Q. UNDER YOUR OWN -- WHAT'S IT CALLED -- TOBACCO  
25 ADDICTION QUESTIONNAIRE THAT YOU USE, RIGHT?  
26 A. WELL, THAT'S NOT A CRITERIA FOR ADDICTION.  
27 THAT'S JUST A SHEET TO COLLECT INFORMATION THAT I THEN FEED  
28 INTO THE FAGERSTROM OR DSM-IV.  
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6677

1 Q. BUT YOU CALL IT THE TOBACCO ADDICTION  
2 QUESTIONNAIRE, DON'T YOU?  
3 A. RIGHT. BUT IT REALLY IS LIKE AN INTERVIEW  
4 GUIDE TO GET THE INFORMATION THAT'S NEEDED TO ASSESS  
5 ADDICTION.  
6 Q. AND YOU ONLY USE THIS IN LITIGATION, RIGHT?  
7 A. YES.  
8 Q. YOU DON'T EVER USE THIS WITH THE PATIENTS YOU  
9 ACTUALLY TREAT?  
10 A. IN PATIENTS I TREAT, I DON'T USE THAT.  
11 IN MY RESEARCH STUDIES, I USE THE FAGERSTROM

12 SCORE ITSELF AND OTHER QUESTIONNAIRES.  
13 Q. SO THIS DOCUMENT --  
14 AND I'M GOING TO MARK IT, YOUR HONOR, THE NEXT  
15 NUMBER.  
16 THE COURT: NEXT IN ORDER IS 109.  
17 MS. WILKINSON: THANK YOU.  
18 THE COURT: AND THAT IS THE -- WHAT DID YOU CALL IT,  
19 TOBACCO --  
20 MS. WILKINSON: TOBACCO ADDICTION QUESTIONNAIRE.  
21 THE COURT: THANK YOU.  
22  
23 (I.D. 109 - TOBACCO ADDICTION QUESTIONNAIRE)  
24  
25 Q. BY MS. WILKINSON: THIS IS YOUR HANDWRITING,  
26 RIGHT --  
27 A. YES.  
28 Q. -- DR. BENOWITZ?  
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6678  
1 WHEN YOU TALKED TO -- I THINK YOU TOLD US YOU  
2 TALKED TO HIM ABOUT 30 MINUTES BACK IN APRIL, RIGHT?  
3 A. THAT COULD BE. I JUST DON'T REMEMBER.  
4 Q. AND YOU NEVER MET HIM IN PERSON?  
5 A. THAT'S CORRECT.  
6 Q. UNLIKE YOUR PATIENTS WHO YOU WOULD SIT DOWN AND  
7 TALK TO IF YOU WERE TREATING THEM, RIGHT?  
8 A. CORRECT.  
9 Q. ALL RIGHT. BECAUSE PART OF IT IS NOT ONLY  
10 HEARING WHAT THEY HAVE TO SAY, BUT JUDGING THEIR DEMEANOR AND  
11 THEIR PHYSICAL APPEARANCE AND ALL THOSE OTHER THINGS THAT YOU  
12 LOOK AT AS A PHYSICIAN, RIGHT?  
13 A. THAT MAY BE USEFUL, YES.  
14 Q. DID YOU JUDGE -- YOU DON'T KNOW UNTIL YOU SEE  
15 THE PERSON, RIGHT, WHETHER THAT MIGHT BE USEFUL OR NOT?  
16 A. THAT'S FAIR.  
17 Q. AND THIS TOBACCO ADDICTION QUESTIONNAIRE, IF I  
18 SUBSEQUENTLY LOOKED AT ALL YOUR MEDICAL FILES FOR ALL THE  
19 PATIENTS THAT YOU TREAT, I WOULDN'T FIND THIS TOBACCO  
20 ADDICTION QUESTIONNAIRE, RIGHT?  
21 A. THAT'S CORRECT. THIS IS SOMETHING THAT IS JUST  
22 COLLECTING INFORMATION TO MAKE AN ASSESSMENT OF ADDICTION.  
23 Q. ALL RIGHT. BUT WHEN YOU TREAT A  
24 PATIENT -- NOW, YOU DON'T RUN A CESSATION CLINIC?  
25 A. THAT'S CORRECT.  
26 Q. YOU TREAT PATIENTS ONLY IF THEY HAVE HEART  
27 DISEASE, AND -- NOT ONLY -- BUT YOU TREAT THEM FOR SMOKING  
28 ADDICTION ONLY IF THEY HAVE -- HEART PATIENTS, THEY DON'T  
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6679  
1 COME TO YOU IF THEIR ONLY ISSUE AT THE TIME IS, I WANT TO  
2 QUIT SMOKING?  
3 A. THAT IS CORRECT.  
4 Q. SO SOMEONE COMES TO YOU BECAUSE THEY HAVE A  
5 SERIOUS HEART CONDITION, AND YOU ASK THEM WHETHER THEY'RE A  
6 SMOKER, AND IF THEY ARE, YOU'RE GOING TO TELL THEM TO QUIT,  
7 RIGHT?  
8 A. YES.  
9 Q. AND YOU'RE GOING TO TRY TO HELP MOTIVATE THEM  
10 TO QUIT?  
11 A. YES.  
12 Q. AND THAT WILL INCLUDE NOT JUST DISCUSSING THE  
13 RISKS OF SMOKING, RIGHT?  
14 A. YES.

15 Q. BUT THE CONSEQUENCES OF SMOKING?  
16 A. WELL, I'M NOT SURE HOW -- WHAT -- WHY THOSE ARE  
17 DIFFERENT.  
18 Q. OKAY. SO --  
19 A. RISKS AND CONSEQUENCES. BUT I DO TALK TO THEM  
20 ABOUT THE FACT THAT THEIR HEALTH WILL BE BETTER AND THAT THEY  
21 WILL FEEL BETTER IN GENERAL IF THEY QUIT SMOKING.  
22 Q. SO ONCE SOMEBODY IS WARNED OF THE RISK, THEN  
23 YOU'RE SAYING THEY KNOW THE CONSEQUENCES?  
24 A. I DON'T UNDERSTAND HOW YOU'RE DIFFERENTIATING  
25 THE RISKS FROM CONSEQUENCES. BUT --  
26 Q. I'M ASKING YOU -- IF YOU DON'T DISTINGUISH,  
27 THAT'S FINE. I JUST WANT TO KNOW YOUR ANSWER.  
28 RISKS AND CONSEQUENCES ARE THE NAMES IN THIS  
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6680

1 CONTEXT; THAT'S CORRECT, WHAT YOU'RE SAYING?  
2 A. I THINK I MUST BE MISSING SOMETHING. BECAUSE I  
3 DON'T RISK -- WELL, I GUESS THERE ARE SOME CONSEQUENCES THAT  
4 MAY NOT BE RISKS TO HEALTH.  
5 BUT IF I THINK ABOUT RISKS AND CONSEQUENCES TO  
6 ME, I'M TALKING ABOUT THE THINGS THAT ARE UNDESIRABLE THAT  
7 WILL OCCUR FROM SMOKING.  
8 Q. OKAY. AND WHEN THOSE PATIENTS COME IN AND  
9 YOU'RE TREATING THEM FOR A HEART CONDITION AND YOU FIND OUT  
10 THAT THEY SMOKE, YOU DO AN ASSESSMENT TO DETERMINE WHETHER  
11 THEY'RE ADDICTED, RIGHT?  
12 A. YES. A BRIEF ONE.  
13 Q. BUT YOU'RE MORE CONCERNED ABOUT HOW TO HELP  
14 THEM STOP SMOKING, RIGHT?  
15 A. YES.  
16 Q. BUT EVEN THOUGH YOU'RE GOING TO DO AN ADDICTION  
17 ASSESSMENT, YOU DON'T USE ANYTHING LIKE THIS, THIS TOBACCO  
18 ADDICTION QUESTIONNAIRE, FOR PATIENTS YOU TREAT?  
19 A. NO, I DO NOT USE THAT.  
20 Q. SO THIS WAS SOMETHING THAT WAS INVENTED FOR  
21 LITIGATION?  
22 A. YEAH. IT'S NOT REALLY INVENTED. IT'S REALLY  
23 SORT OF AN INTERVIEW SHEET TO MAKE SURE I COLLECT THE  
24 INFORMATION NEEDED FOR THE FAGERSTROM AND FOR THE DSM.  
25 Q. DO YOU USE THE FAGERSTROM AND THE DSM WHEN YOU  
26 TREAT YOUR PATIENTS?  
27 A. NO, NOT REALLY. I USE THEM IN MY RESEARCH  
28 STUDIES.  
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6681

1 WHEN I SEE A CARDIOLOGY PATIENT WHO'S A SMOKER,  
2 THEY'RE VIRTUALLY ALL HIGHLY ADDICTED BECAUSE THEY KNOW THEY  
3 SHOULDN'T BE SMOKING, AND THEY CAN'T STOP. SO SEVERITY OF  
4 ADDICTION IS NOT REALLY A PROBLEM I HAVE TO ADDRESS. THEY'RE  
5 ALL ADDICTED.  
6 Q. WELL, YOU BELIEVE MOST SMOKERS ARE ADDICTED,  
7 RIGHT?  
8 A. MOST DAILY SMOKERS, YES.  
9 Q. IN FACT, YOU BELIEVE 80 TO 90 PERCENT OF  
10 SMOKERS ARE ADDICTED?  
11 A. YES.  
12 Q. SO ADDICTION IS NOT A HARD QUESTION FOR YOU  
13 WHEN ASSESSING SMOKERS, MOST SMOKERS?  
14 A. RIGHT.  
15 Q. RIGHT?  
16 A. CERTAINLY MOST PEOPLE WHO HAVE HEART DISEASE  
17 AND HAVE BEEN BEFORE THEY HAVE IT.

18 Q. BUT YOU'VE DONE RESEARCH ON PEOPLE THAT DON'T  
19 HAVE HEART DISEASE, AND YOU STILL BELIEVE MOST SMOKERS, IN  
20 FACT, SMOKERS WHO SMOKE OVER FIVE CIGARETTES A DAY, ARE  
21 ADDICTED?

22 A. MOST ARE, THAT'S CORRECT.

23 Q. AND THAT'S 80 TO 90 PERCENT OF SMOKERS IN THE  
24 UNITED STATES?

25 A. YES.

26 Q. SO ONCE YOU ASK SOMEONE WHETHER THEY SMOKE MORE  
27 THAN FIVE CIGARETTES A DAY, GENERALLY YOU'RE GOING TO SAY  
28 THEY'RE ADDICTED?

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6682

1 A. FOR THE MOST PART, YES.

2 Q. SO THAT ONLY GETS US TO THE FIRST STEP. THAT  
3 DOESN'T TELL US ANYTHING ABOUT WHETHER THEY CAN QUIT?

4 A. WELL, LIKE WE SAID BEFORE, ANYONE CAN QUIT.  
5 THE QUESTION IS TRYING TO GET THEM TO DO SO.

6 Q. RIGHT. AND IT'S A VERY INDIVIDUALIZED  
7 QUESTION, ISN'T IT?

8 A. YES.

9 Q. SO KNOWING THAT THEY'RE ADDICTED, LIKELY 80 TO  
10 90 PERCENT OF THE OTHER FOLKS, DOESN'T TELL US WHETHER THEY,  
11 AS AN INDIVIDUAL, CAN QUIT?

12 A. RIGHT. THEN THE QUESTION COMES UP AS TO THE  
13 SEVERITY OF ADDICTION, WHICH REFLECTS HOW HARD IT IS FOR THEM  
14 TO QUIT.

15 Q. WELL, LET'S TALK ABOUT THAT FOR A MINUTE.

16 YOU'RE NOT SAYING THAT YOU DISAGREE WITH THE  
17 LITERATURE THAT SAYS THAT THE AMOUNT PEOPLE THAT SMOKE IS NOT  
18 PREDICTIVE OF WHETHER THEY CAN QUIT, ARE YOU?

19 A. WELL, THAT LITERATURE IS REALLY -- IF YOU LOOK  
20 AT EXTREMES, FOR EXAMPLE, IF YOU LOOK AT FIVE CIGARETTES PER  
21 DAY, AND YOU LOOK AT SOMEONE WHO'S SMOKING A PACK A DAY, IT  
22 IS HARDER FOR MOST PEOPLE WHO SMOKE A PACK A DAY TO QUIT THAN  
23 PEOPLE WHO SMOKE FIVE CIGARETTES A DAY.

24 NOW, WHEN YOU GET COMPARING 20 OR 30 CIGARETTES  
25 A DAY, OR 40, IT'S HARDER TO DIFFERENTIATE WITHIN THAT RANGE.  
26 BUT THERE ARE CLEAR DOSE-RESPONSE ISSUES FROM THE LIGHTER  
27 SMOKERS TO THE HEAVIER SMOKERS.

28 Q. OKAY. APPRECIATE YOUR EXPLANATION. BUT WE'RE  
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1 TALKING ABOUT SOME LITERATURE.

2 DO YOU KNOW THE NAME OF THE LITERATURE, THE  
3 AUTHOR THAT I'M REFERRING TO, ETTER.

4 ARE YOU FAMILIAR WITH THAT LITERATURE?

5 A. I KNOW DR. ETTER.

6 Q. OKAY. YOU'VE READ SOME OF HIS WRITINGS?

7 A. YES.

8 Q. YOU'RE FAMILIAR WITH THE JOURNAL, I'M SURE,  
9 CALLED "NEUROPSYCHOPHARMACOLOGY," RIGHT?

10 A. YES.

11 Q. AND YOU'RE AWARE OF AN ARTICLE HE WROTE JUST  
12 THIS YEAR ON SELF-ADMINISTERED QUESTIONNAIRE TO MEASURE  
13 DEPENDENCE ON CIGARETTES, THE CIGARETTE DEPENDENCE SCALE?

14 A. I HAVE SEEN THAT ARTICLE. I DON'T RECALL ALL  
15 THE DETAILS OF IT.

16 Q. WELL, LET ME ASK YOU WHETHER YOU AGREE OR  
17 DISAGREE WITH A QUOTE FROM THAT ARTICLE, IF I COULD.  
18 HE SAYS, QUOTE (READING):  
19  
20

NONE OF THE MEASURES OF DEPENDENCE



21 PREDICTED SMOKING CESSATION, BUT MOTIVATION  
22 TO QUIT SMOKING -- TO SELF-PERCEIVED  
23 LIKELIHOOD OF QUITTING SMOKING AND THE  
24 SELF-PERCEIVED CHANCES OF SUCCESS OF QUIT  
25 ATTEMPTS DID.  
26

27 AND THEN HE GOES ON TO SAY (READING):  
28

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1 THIS SUGGESTS THAT SMOKING  
2 CESSATION RELIES ON PSYCHOLOGICAL AND SOCIAL  
3 PROCESSES THAT ARE FAIRLY INDEPENDENT OF THE  
4 LEVEL OF ADDICTION.  
5

6 A. I DON'T ENTIRELY AGREE WITH THAT. I THINK  
7 THAT'S WHAT HE FOUND IN HIS STUDY, BUT THERE HAVE BEEN OTHER  
8 STUDIES THAT HAVE FOUND THAT SCALES LIKE THE FAGERSTROM DO  
9 PREDICT HOW HARD IT'S GOING TO BE AT SOME LEVEL FOR SOMEONE  
10 TO QUIT, AND ONE OF THE FACTORS IN THE FAGERSTROM IS HOW MANY  
11 CIGARETTES PER DAY YOU SMOKE.

12 Q. WELL, ONCE YOU FIND OUT WHETHER SOMEONE IS  
13 ADDICTED, THAT'S WHAT HE'S TALKING ABOUT, RIGHT, NOT PEOPLE  
14 WHO AREN'T ADDICTED?

15 ISN'T THERE A TERM CALLED CHIPPERS?

16 A. YES.

17 Q. THAT'S FOR PEOPLE WHO DON'T SMOKE VERY MANY  
18 CIGARETTES A DAY, RIGHT?

19 A. RIGHT. OR DON'T SMOKE EVERY DAY, THAT'S  
20 CORRECT.

21 Q. BUT ONCE YOU GET PASSED THOSE FOLKS, AND YOU'RE  
22 TALKING ABOUT THIS GROUP, YOU CAN'T PREDICT BECAUSE THERE'S  
23 NO SCIENTIFIC LITERATURE TO SHOW HOW YOU WOULD PREDICT WHICH  
24 ONE OF THESE PEOPLE WHO'S ADDICTED WILL QUIT, BASED ON THE  
25 NUMBER OF CIGARETTES OR, EVEN AS YOU'RE DESCRIBING IT, THE  
26 SEVERITY OF THEIR ADDICTION, RIGHT?

27 A. WELL, ONCE YOU GET ABOVE A CERTAIN LEVEL,  
28 THAT'S TRUE.

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1 Q. OKAY.

2 A. IF YOU'RE LOOKING AT SMOKERS, SAY, AT 15 OR 20  
3 CIGARETTES OR ABOVE, THEN I WOULD SAY WHAT YOU SAY IS  
4 PROBABLY CORRECT.

5 Q. AND MOST PEOPLE WHO ARE REGULAR SMOKERS SMOKE  
6 IN EXCESS OF 15 CIGARETTES A DAY?

7 A. YES.

8 Q. RIGHT. SO WE'VE GOT THE WORLD OF SMOKERS, THE  
9 WORLD OF ADDICTED SMOKERS, AND MOST OF THOSE FOLKS SMOKE IN  
10 EXCESS OF 15 CIGARETTES A DAY, RIGHT?

11 A. MOST, YES.

12 Q. SO WE'VE STILL GOT A BIG WORLD, AND WE'RE  
13 TRYING TO FIGURE OUT HOW DO YOU PREDICT WHETHER AN INDIVIDUAL  
14 CAN QUIT.

15 UNDER THOSE PARAMETERS, SAYING THEY'RE  
16 ADDICTED, OR EVEN THE WORD YOU USED, HIGHLY ADDICTED, DOESN'T  
17 PREDICT FOR US WHETHER A PARTICULAR INDIVIDUAL CAN QUIT,  
18 RIGHT?

19 A. WELL, IT DEPENDS ON WHERE OR HOW THE HIGHLY  
20 ADDICTED IS DERIVED FROM. IF IT'S JUST A FAGERSTROM, THEN I  
21 AGREE WITH YOU.

22 Q. ALL RIGHT. WELL, HIGHLY -- FIRST OF ALL, LET'S  
23 TALK ABOUT THIS WORD.

24                   YOU'VE TOLD ME THAT THE WORD HIGHLY IS NOT A  
25 WORD YOU USE WHEN YOU TREAT YOUR PATIENTS, RIGHT?  
26           A.     RIGHT. IT'S NOT RELEVANT TO MY PATIENTS. THEY  
27 ALL NEED TO QUIT. AND IT DOESN'T MATTER IF THEY'RE HIGHLY OR  
28 LOWLY ADDICTED.  
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1           Q.     YOU DON'T NEED TO IDENTIFY THAT WHEN YOU'RE  
2 TRYING TO FIGURE OUT WHETHER THEY CAN QUIT OR HOW TO MOTIVATE  
3 THEM, RIGHT?

4           A.     CORRECT.

5           Q.     YOU ONLY WOULD USE THE WORD HIGHLY WHEN YOU  
6 TESTIFY IN COURT ON BEHALF OF THE SMOKER?

7           A.     AND IN MY RESEARCH, IF I'M TRYING TO LOOK AT  
8 SMOKING BEHAVIORS, I'M TRYING TO CHARACTERIZE THE NATURE OF  
9 MY RESEARCH SUBJECTS, I MAY USE THAT TERM.

10                  BUT TO GET BACK TO WHAT I WAS  
11 SAYING --

12          Q.     WELL --

13                  THE COURT: THIS IS NOT AN INTERCHANGE. IT'S A  
14 QUESTION AND ANSWER. OKAY.

15                  THE WITNESS: SORRY, YOUR HONOR.

16          Q.     BY MS. WILKINSON: I'M SURE YOU HAVE LOTS YOU'D  
17 LIKE TO TELL US, AND HOPEFULLY, WE'LL GET TO THOSE THINGS,  
18 BUT HOPEFULLY, WE'RE TRYING TO WATCH THE CLOCK.

19          A.     YES.

20          Q.     AND I GET TO ASK THE QUESTIONS. OKAY?

21          A.     YES.

22          Q.     ONCE WE HAVE THE DIAGNOSIS OF ANY ONE  
23 INDIVIDUAL, THEN THE TOUGH QUESTION IS, CAN THEY QUIT, RIGHT?

24          A.     YES.

25          Q.     AND THAT'S IMPORTANT TO YOU AS A PHYSICIAN WHEN  
26 YOU'RE LOOKING AT PEOPLE WHO ARE ALREADY AT RISK BECAUSE THEY  
27 HAVE SOME KIND OF HEART CONDITION?

28          A.     YES.

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1          Q.     OR HEART DISEASE?

2          A.     YES.

3          Q.     SO IT'S ESSENTIAL THAT YOU TRY AND HELP THEM  
4 QUIT, RIGHT?

5          A.     YES.

6          Q.     AND YOU BELIEVE THAT THE MOST IMPORTANT THING  
7 WHEN IT COMES TO QUITTING IS MOTIVATION?

8          A.     WELL, YES, THAT IS CRITICAL.

9          Q.     AND NOBODY WHO'S EXPERIENCED AND WELL-REGARDED  
10 IN THEIR FIELD, LIKE YOU, DISAGREES WITH YOU ON THAT IN THIS  
11 FIELD, RIGHT?

12          A.     I DON'T THINK SO.

13          Q.     EVERYBODY TALKS ABOUT MOTIVATION?

14          A.     YES.

15          Q.     AND WHEN YOU TALK ABOUT MOTIVATION, OR WHEN  
16 SOME PEOPLE WHO WRITE AND STUDY IN THIS AREA TALK ABOUT  
17 MOTIVATION, THEY TALK ABOUT WHETHER PEOPLE ARE READY TO QUIT,  
18 RIGHT, WHETHER THEY'RE IN THAT PHASE?

19          A.     YES.

20          Q.     RIGHT. THERE'S SOMETHING CALLED  
21 PRECONTEMPLATION THAT SOME PEOPLE DESCRIBE?

22          A.     YES.

23          Q.     TELL THE JURY WHAT PRECONTEMPLATION IS.

24          A.     WELL, READINESS TO QUIT SMOKING HAS BEEN  
25 CLASSIFIED IN DIFFERENT STAGES.

26                  SO THERE IS PRECONTEMPLATION, WHICH MEANS

27 YOU'RE NOT EVEN THINKING ABOUT QUITTING.  
28 THERE'S A CONTEMPLATION STAGE, WHERE YOU'RE  
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1 THINKING ABOUT IT, BUT YOU HAVEN'T MADE UP YOUR MIND.  
2 THERE IS A PREQUITTING STAGE, WHERE YOU'VE MADE  
3 UP YOUR MIND, BUT YOU HAVEN'T REALLY STARTED YET.  
4 AND THEN THERE'S A QUITTING STAGE, WHERE YOU'RE  
5 ACTIVELY TRYING TO DO IT.  
6 Q. AND IF SOMEONE'S IN THE PRECONTEMPLATION PHASE,  
7 IT'S PRETTY HARD TO GET THEM TO QUIT, RIGHT?  
8 A. CORRECT. YOUR JOB, THEN, IS TO TRYING TO MOVE  
9 THEM ALONG SO THEY'RE MORE MOTIVATED TO QUIT.  
10 Q. NOW, TO MAKE THAT DETERMINATION, YOU NEED TO  
11 KNOW AS MUCH ABOUT THE INDIVIDUAL AS YOU CAN, RIGHT?  
12 A. YES.  
13 Q. AND EVEN IF YOU WERE LOOKING BACK, AS YOU HAVE  
14 IN THIS CASE ON MR. RELLER, IT'S IMPORTANT TO KNOW WHAT HIS  
15 SMOKING HISTORY IS?  
16 A. YES.  
17 Q. HIS PERSONAL HISTORY, RIGHT, LIKE YOU TOLD US?  
18 A. SOME ASPECTS OF IT, YES.  
19 Q. IT'S IMPORTANT TO KNOW, LOOK BACK AT HIS FAMILY  
20 AND SEE WHETHER THERE WERE OTHER SMOKERS OR OTHER PEOPLE WHO  
21 HAD ALCOHOL PROBLEMS?  
22 A. THAT WOULD BE HELPFUL.  
23 Q. ALL RIGHT. IT'S IMPORTANT TO KNOW WHAT OTHER  
24 INFLUENCES HE HAD IN HIS LIFE?  
25 A. YES.  
26 Q. WHILE HE WAS SMOKING?  
27 A. YES.  
28 Q. OKAY. AND THE THINGS THAT MOTIVATE HIM  
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1 PERSONALLY?  
2 A. YES.  
3 Q. RIGHT. IN THIS CASE, YOU TOLD US YOU LOOKED AT  
4 SOME OF THOSE THINGS WITH REGARD TO MR. RELLER, RIGHT?  
5 A. YES.  
6 Q. YOU LOOKED AT PARTS OF HIS DEPOSITION?  
7 A. YES.  
8 Q. AND YOU TALKED TO HIM ON THE PHONE?  
9 A. YES.  
10 Q. OKAY. YOU LEARNED THAT AFTER HE HAD BEEN  
11 SMOKING FOR, WHAT DID YOU SAY, STARTED AROUND IN 1955, DID  
12 YOU LEARN THAT HIS FATHER QUIT SMOKING IN 1962?  
13 A. YES.  
14 Q. NOW, YOU TALKED ABOUT GENETICS A LITTLE BIT  
15 BEFORE.  
16 A. YES.  
17 Q. THIS MORNING, RIGHT?  
18 AND YOU CAN'T TELL US WHICH GENE IT IS THAT  
19 MAKES ME MORE LIKELY TO BE A SMOKER, RIGHT?  
20 A. WE CAN'T YET. WE'RE WORKING ON IT.  
21 Q. AND THAT RESEARCH IS VERY IMPORTANT, ISN'T IT?  
22 A. YES.  
23 Q. ARE YOU AWARE OF SOME OF THE PEOPLE IN THE  
24 FIELD WHO ARE DOING THAT RESEARCH?  
25 A. YES.  
26 Q. DO YOU KNOW DR. EDWARD DOMINO?  
27 A. YES.  
28 Q. ARE YOU AWARE OF HIS RESEARCH IN THAT AREA?  
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1 A. I KNOW THE RESEARCH HE'S DOING. I DON'T KNOW  
2 WHAT WORK HE'S DOING IN TERMS OF IDENTIFYING THE GENES  
3 RESPONSIBLE FOR ADDICTION.

4 Q. OKAY. YOU WOULD BE INTERESTED IN THE RESULTS  
5 OF THAT RESEARCH, RIGHT, TO ANALYZE FOR YOURSELF?

6 A. SURE.

7 Q. OR ANYONE WHO'S DOING GENETIC- --

8 A. YES.

9 Q. -- RELATED RESEARCH, RIGHT?

10 BUT SO FAR, YOU CAN'T TELL ANY OF US THAT WE  
11 HAVE THE GENE OR WE DON'T THAT MIGHT MAKE US MORE LIKELY TO  
12 SMOKE OR DRINK IN EXCESS?

13 A. THAT'S CORRECT. MEDICAL SCIENCE DOES NOT HAVE  
14 THAT KNOWLEDGE YET.

15 Q. BUT IT HELPS TO LOOK AT SOMEONE'S GENETICS, BE  
16 IT THEIR FAMILY MEMBERS, RIGHT?

17 A. YES.

18 Q. IN AN IDEAL WORLD, THEIR TWIN, AN IDENTICAL  
19 TWIN, AS YOU WERE TELLING ME?

20 A. YES.

21 Q. BUT LOOKING AT THEIR FATHER OR MOTHER MIGHT BE  
22 OF SOME HELP, RIGHT?

23 A. YES.

24 Q. AND IN THIS CASE, WE HAVE SOME INFORMATION  
25 ABOUT MR. RELLER WHEN IT COMES TO THAT, RIGHT?

26 A. YES.

27 Q. HIS FATHER WAS A LONG-TERM SMOKER?

28 A. YES.

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1 Q. DO YOU KNOW HOW MUCH HIS FATHER SMOKED EACH  
2 DAY?

3 A. I DON'T RECALL.

4 Q. YOU WOULDN'T DISAGREE IT WAS BETWEEN A PACK AND  
5 TWO PACKS A DAY?

6 A. NO.

7 Q. DO YOU KNOW HOW OLD MR. RELLER'S FATHER WAS  
8 WHEN HE QUIT?

9 A. I DON'T.

10 Q. YOU KNOW IT WAS IN 1962, RIGHT?

11 A. YES.

12 Q. SO JUST ASSUME, HYPOTHETICALLY, HE WAS ABOUT  
13 47 YEARS OLD AT THE TIME.

14 A. OKAY.

15 Q. OKAY. AND DID MR. RELLER TELL YOU -- OR DID  
16 YOU READ IN HIS DEPOSITION THAT HIS FATHER WAS WITH HIM WHEN  
17 HE QUIT?

18 A. YES.

19 Q. AND THAT HE CRUMBLed UP HIS CIGARETTES, THREW  
20 THEM OUT?

21 A. YES.

22 Q. NOW, YOU HAVE NO REASON TO DISPUTE THAT  
23 MR. RELLER'S FATHER WAS ALSO A HIGHLY ADDICTED SMOKER, RIGHT?

24 A. NO.

25 Q. AND HE WAS ABLE TO QUIT COLD TURKEY --

26 A. YES.

27 Q. -- RIGHT?

28 SAME GENERAL GENETIC MAKEUP, ALTHOUGH

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1 EVERYBODY'S DIFFERENT, THEN, IN THE SAME FAMILY?

2 A. YES. MUCH LESS SIMILAR THAN IDENTICAL TWINS.

3 BUT SOME SIMILAR GENETIC MAKEUP.

4 Q. WELL, EVEN WITH IDENTICAL TWINS, THEY'RE NOT  
5 EVEN EXACTLY THE SAME, RIGHT?

6 A. THAT'S CORRECT.

7 Q. IF YOU FOUND OUT THAT DR. LEWIS WAS AN  
8 IDENTICAL TWIN, IF HER SISTER DID SOMETHING DIFFERENT THAN  
9 HER, THEN THAT MEANS IT MIGHT BE THE GENETIC COMPONENTS THAT  
10 EXPLAINS THE BEHAVIOR, RIGHT?

11 A. WELL, THERE'S NOT PERFECT REPLICATION OF  
12 BEHAVIOR. IT'S JUST MORE CLOSELY RELATED IN IDENTICAL TWINS  
13 THAN NONIDENTICAL TWINS.

14 Q. MORE PREDICTED, RIGHT?

15 A. YES.

16 Q. DID YOU LEARN, WHEN YOU WERE LOOKING BACK AT  
17 MR. RELLER'S HISTORY, THAT IN 1964 HE LEARNED ABOUT THE  
18 SURGEON GENERAL'S REPORT?

19 A. YES.

20 Q. YOU DIDN'T MENTION THAT IN YOUR DIRECT  
21 TESTIMONY, RIGHT?

22 A. THAT'S CORRECT.

23 Q. AND HE SAID, DIDN'T HE, IN HIS TESTIMONY, THAT  
24 HE SWITCHED TO FILTERED CIGARETTES BECAUSE OF THE SURGEON  
25 GENERAL'S REPORT?

26 A. YES.

27 Q. SO HE DIDN'T SAY IT WAS BECAUSE OF  
28 PHILIP MORRIS; HE SAID IT WAS BECAUSE OF THE SURGEON  
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1 GENERAL'S REPORT, RIGHT?

2 A. BECAUSE OF CONCERN ABOUT TAR, YES.

3 Q. HE SAID HE LEARNED THAT FROM THE SURGEON  
4 GENERAL'S REPORT, DIDN'T HE?

5 A. OR READING ABOUT THE REPORT, YES.

6 Q. OKAY.

7 A. I DOUBT HE READ THE REPORT.

8 Q. RIGHT. BUT HE READ ABOUT OR HEARD ABOUT THE  
9 PUBLICITY REGARDING THE SURGEON GENERAL'S REPORT?

10 A. YES.

11 Q. OTHER THAN YOU, THAT'S HOW MOST PEOPLE HEARD  
12 ABOUT IT, RIGHT?

13 A. YES.

14 Q. WELL, YOU WEREN'T A PHYSICIAN AT THE TIME,  
15 RIGHT?

16 A. THAT'S CORRECT. THAT WAS BEFORE MY TIME OF  
17 INTEREST IN CIGARETTES.

18 Q. BUT MOST PEOPLE IN AMERICA HEARD ABOUT THE  
19 REPORT, NOT BECAUSE THEY READ IT COVER TO COVER?

20 A. CORRECT.

21 Q. THEY SAW ALL THE NEWSPAPER ARTICLES?

22 A. YES.

23 Q. TV COVERAGE?

24 A. YES.

25 Q. YOU'VE LOOKED BACK AT THAT NOW BECAUSE OF YOUR  
26 INTEREST IN SMOKING AND HEALTH?

27 A. YES.

28 Q. AND THERE WAS AN DELUGE OF PUBLICITY  
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6694

1 SURROUNDING THE 1964 REPORT?

2 A. YES, THERE WAS A LOT.

3 Q. SO WHEN MR. RELLER SAYS HE LEARNED THAT SMOKING  
4 WAS BAD FOR HIM AND TARS WERE BAD FROM THE SURGEON GENERAL'S  
5 REPORT, YOU BELIEVE HE'S TALKING ABOUT THE PUBLICITY THAT WAS

6 GENERATED FROM THE REPORT?

7 A. YES.

8 Q. BUT THAT WASN'T FROM PHILIP MORRIS?

9 A. CORRECT.

10 Q. NOW, IN 1964, IF HE HAD QUIT WHEN HE WAS WARNED  
11 BY THE SURGEON GENERAL, IT WOULD HAVE BEEN BETTER FOR HIS  
12 HEALTH, WOULDN'T IT?

13 A. YES.

14 Q. AND YOU'VE SAID THAT HE COULD HAVE QUIT SMOKING  
15 IF HE BELIEVED THAT IT WAS GOING TO HURT HIM, RIGHT?

16 A. BASED ON WHEN HE ULTIMATELY DID, I THINK THAT  
17 HE MAY HAVE. IF HE WAS CONVINCED THAT IT WOULD BE HARMFUL TO  
18 HIS HEALTH, YES.

19 Q. BUT HE HAD TO BELIEVE IT?

20 A. YES.

21 Q. AND THE SURGEON GENERAL SAID SMOKING CAUSED  
22 LUNG CANCER IN MEN?

23 A. YES.

24 Q. RIGHT?

25 AND THAT WAS NOT -- THAT WAS THE  
26 HIGHEST-RANKING OFFICIAL IN THE UNITED STATES WHEN IT CAME TO  
27 PUBLIC HEALTH ISSUES AT THE TIME?

28 A. YES.

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1 Q. AND THAT WAS THE MAIN MESSAGE OF THE REPORT?

2 A. YES.

3 Q. BUT EVEN THOUGH THE SURGEON GENERAL SAID THAT  
4 AND THE PUBLIC HEALTH COMMUNITY JOINED IN, THEY CAN'T FORCE  
5 MR. RELLER TO BELIEVE THAT?

6 A. HE DIDN'T BELIEVE IT.

7 Q. WELL, YOU DON'T -- YOU DON'T KNOW THAT, DO YOU?

8 A. WELL, HE STATED HE DIDN'T BELIEVE IT.

9 Q. YOU'RE SAYING HE SAID IN HIS DEPOSITION THAT HE  
10 DIDN'T BELIEVE THE SURGEON GENERAL?

11 A. THAT HE DIDN'T BELIEVE THAT SMOKING WAS HARMFUL  
12 FOR HIM.

13 Q. WELL, I DON'T -- HE DIDN'T SAY THAT ABOUT WHEN  
14 HE TRIED TO QUIT SMOKING WHEN HE THOUGHT HE WAS VOMITING  
15 BLOOD, DID HE?

16 A. NO. AT THAT TIME, HE THOUGHT THAT VOMITING  
17 BLOOD WAS FROM SMOKING.

18 Q. SO HE DID BELIEVE SMOKING WAS HARMING HIM AT  
19 THAT POINT, DIDN'T HE?

20 A. AT THAT MOMENT, YES.

21 Q. OKAY. AND THAT WAS, WHAT, ALMOST TEN  
22 YEARS -- NOT EVEN TEN YEARS LATER, SEVEN, EIGHT YEARS LATER,  
23 1971 OR 1972?

24 A. YES.

25 Q. SO ON HIS OWN, BASED ON WHATEVER INFORMATION,  
26 HE BELIEVED SMOKING WAS HURTING HIM, MAKING HIM SICK?

27 A. WELL, HE WAS CONCERNED ABOUT THE EPISODE IN  
28 1971 OR '72, BUT WHAT I RECALL HIM SAYING, THAT UNTIL HE WAS  
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1 DIAGNOSED WITH CANCER, HE DID NOT BELIEVE HIS SMOKING WAS  
2 HURTING HIM, EXCEPT FOR THAT ONE EPISODE.

3 Q. OKAY. BUT IN THAT ONE EPISODE, HE BELIEVED IT  
4 WAS MAKING HIM SICK?

5 A. IT COULD, BUT IT TURNED OUT IT WASN'T BLOOD, SO  
6 HE DECIDED IT WAS NOT HURTING HIM AFTER ALL.

7 Q. SO WHEN HE BELIEVED IT WAS AFFECTING HIM, HE  
8 STOPPED SMOKING?

9 A. FOR A COUPLE OF DAYS, YES.  
10 Q. THAT'S WHY YOU SAY HE'S SOMEONE WHO COULD QUIT  
11 SMOKING, RIGHT?  
12 A. PROBABLY COULD HAVE, YES.  
13 Q. BECAUSE YOU HAVE DIVIDED ADDICTED SMOKERS IN  
14 THREE CATEGORIES, RIGHT?  
15 A. IT DEPENDS FOR WHAT PURPOSE.  
16 Q. WELL, WHEN WE TALKED DURING YOUR DEPOSITION,  
17 YOU DID THAT, DIDN'T YOU?  
18 A. YOU ASKED ME ABOUT DOING THAT, AND YES, I DID.  
19 Q. I DIDN'T FORCE YOU TO DO IT, DID I?  
20 A. NO. BUT YOU ASKED QUESTIONS IN A SPECIFIC WAY,  
21 ASKING ME TO CATEGORIZE IT IN THOSE THREE WAYS, BUT --  
22 Q. YOU GOT TO CHOOSE THE CATEGORIES, RIGHT?  
23 A. I DON'T RECALL. COULD BE.  
24 Q. YOU WANT TO SEE YOUR DEPOSITION, JUST TO MAKE  
25 SURE?  
26 A. NO, THAT'S FINE.  
27 Q. OKAY. AND WE MADE A CHART OF THAT LOVELY  
28 DRAWING, WHICH IS A LITTLE -- BECAUSE THAT WAS DRAWN ON A  
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6697  
1 LEGAL PIECE OF PAPER, WASN'T IT?  
2 A. YES.  
3 MS. WILKINSON: AND, YOUR HONOR, I WANT TO MARK THIS.  
4 THE COURT: THIS WILL BE NEXT IN ORDER, WHICH IS 110.  
5 110 IS A CHART BY DR. BENOWITZ.  
6 WILL THAT DO?  
7 MS. WILKINSON: YES, YOUR HONOR.  
8 THE COURT: 110, CHART BY DR. BENOWITZ  
9  
10 (I.D. 110 - BLOWUP OF CHART BY DR. BENOWITZ)  
11  
12 Q. BY MS. WILKINSON: DR. BENOWITZ, WE WERE  
13 TALKING ABOUT ONLY ADDICTED SMOKERS, RIGHT?  
14 A. YES.  
15 Q. BECAUSE WE'VE ALREADY GONE OVER -- THIS IS THE  
16 MAJORITY OF SMOKERS AND THE SMOKERS YOU CARE ABOUT BECAUSE  
17 THE ONES WHO AREN'T ADDICTED PROBABLY DON'T HAVE A VERY HARD  
18 TIME QUITTING?  
19 A. RIGHT.  
20 Q. BUT EVEN IN THE ADDICTED SMOKERS CATEGORY, YOU  
21 BELIEVE 10 TO 20 PERCENT OF THE POPULATION HAS AN EASY TIME  
22 QUITTING?  
23 A. YES.  
24 Q. AND YOU BELIEVE THAT BECAUSE YOU'VE HEARD THEIR  
25 STORIES?  
26 A. YES.  
27 Q. YOU'VE HEARD VERY HEAVY SMOKERS TELL YOU, I  
28 SMOKE TWO PACKS A DAY, EVEN THREE PACKS DAY; ONE DAY I  
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6698  
1 DECIDED I WASN'T GOING TO DO IT ANYMORE, I PUT DOWN THE PACK  
2 AND I NEVER WENT BACK, RIGHT?  
3 A. THAT'S RIGHT, YES.  
4 Q. THOSE STORIES ARE REPORTED, AND, IN FACT, THE  
5 SURGEON GENERAL'S REPORTS THAT YOU'VE WORKED ON HAVE REPORTED  
6 THAT 90 PERCENT OF THE PEOPLE QUIT WITHOUT ANY ASSISTANCE?  
7 A. RIGHT. THAT'S NOT THE SAME AS EASY TO QUIT.  
8 Q. NO.  
9 A. BUT THAT'S CORRECT, WITHOUT ASSISTANCE.  
10 Q. AND, IN FACT, THIS IS A SMALL NUMBER, RIGHT?  
11 I MEAN, MOST PEOPLE, IT'S HARD TO QUIT?

12 A. YES.  
13 Q. AND YOU CATEGORIZE THE  
14 HARD-TO-QUIT-BUT-CAN-QUIT GROUP AS INCLUDING 60 TO 80 PERCENT  
15 OF THOSE ADDICTED SMOKERS?  
16 A. THAT'S CORRECT.  
17 Q. AND THIS IS HARD TO QUIT BECAUSE OF THE REASONS  
18 THAT YOU TALKED ABOUT, BUT THE IMPORTANT THING IS THEY CAN  
19 QUIT?  
20 A. YES.  
21 Q. EVEN IF YOU THOUGH KNOW THEY WON'T SAY THAT,  
22 THERE ARE PEOPLE THAT CANNOT QUIT, RIGHT?  
23 A. NO.  
24 Q. THAT'S WHY YOU USE THIS CATEGORY OVER HERE?  
25 A. THERE ARE PEOPLE WHO TRY MANY TIMES AND CAN'T  
26 QUIT OR ARE NOT EVEN ABLE TO TRY TO QUIT. AND THAT'S THE  
27 BASIS FOR THE WHOLE MOVEMENT OF TRYING TO REDUCE HARM.  
28 SO I MEAN, THEY CAN ALL QUIT IF WE TAKE THEM  
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1 OUT OF THEIR NORMAL LIVES, BUT, FOR WHATEVER REASON, THEY  
2 APPARENTLY CAN'T QUIT THEMSELVES.  
3 Q. THE WAY YOU DESCRIBE THAT IS THEY SAY THEY  
4 CANNOT QUIT?  
5 A. RIGHT.  
6 Q. BECAUSE YOU BELIEVE, AS YOU JUST DESCRIBED,  
7 THAT EVERYONE CAN QUIT?  
8 A. WELL, EVERYONE PHYSICALLY CAN QUIT. THE  
9 QUESTION IS, CAN THEY QUIT IN THEIR REAL LIVES?  
10 Q. OKAY. AND THERE'S JUST SOME PEOPLE WHO CAN'T  
11 DO THAT IN THEIR REAL LIVES, AND YOU SAY THAT'S 10 TO 20  
12 PERCENT, RIGHT?  
13 A. YES.  
14 Q. THESE FOLKS WHO HAVE A HARD TIME QUITTING VARY;  
15 I MEAN, SOME TAKE ONE QUIT ATTEMPT, SOME TAKE FIVE, AND SOME  
16 TAKE 20, RIGHT?  
17 A. YES.  
18 Q. BUT 60 TO 80 PERCENT OF THEM QUIT, AND YOU SAID  
19 MOST LIKELY MR. RELLER WAS RIGHT IN THAT CATEGORY?  
20 A. YES.  
21 Q. YOU'VE TESTIFIED IN OTHER CASES, AND YOU'VE  
22 SEEN PEOPLE WHO ARE IN THIS CATEGORY, RIGHT?  
23 A. YES.  
24 Q. IN FACT, SOME OF THOSE FOLKS ARE PEOPLE WHO GET  
25 DIAGNOSED WITH LUNG CANCER AND OTHER HORRIBLE TERMINAL  
26 DISEASES AND KEEP SMOKING?  
27 A. YES.  
28 Q. RIGHT?  
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6700  
1 A. YES.  
2 Q. YOU'VE SEEN THOSE PEOPLE?  
3 A. YES.  
4 Q. THAT'S A PRETTY GOOD INDICATOR THAT THEY'RE  
5 HAVING AN INCREDIBLY HARD TIME QUITTING?  
6 A. YES.  
7 Q. DOESN'T SEEM RATIONAL TO YOU THAT SOMEONE CAN  
8 BE DIAGNOSED WITH A TERMINAL DISEASE AND STILL CONTINUE TO  
9 SMOKE?  
10 A. DOESN'T SEEM RATIONAL TO MOST PEOPLE.  
11 Q. RIGHT. AND THOSE PEOPLE FIT IN THIS CATEGORY?  
12 A. YES.  
13 Q. NOT IN MR. RELLER'S CATEGORY?  
14 A. CORRECT.



15 Q. NOW, WHEN WE START LOOKING AT THAT CATEGORY,  
16 AND WE'RE ALREADY SAYING THESE PEOPLE CAN QUIT, THE QUESTION  
17 THEN BECOMES, WERE THEY REALLY MOTIVATED TO QUIT, RIGHT?  
18 A. YES.  
19 Q. OR ARE THEY MOTIVATED TO QUIT?  
20 A. YES.  
21 Q. AND YOU LOOK AT LOTS OF DIFFERENT THINGS TO  
22 DETERMINE WHETHER PEOPLE ARE MOTIVATED TO QUIT?  
23 A. YES.  
24 Q. WE TALKED A LITTLE ABOUT WHERE THEIR MIND IS  
25 WHEN THEY'RE IN THAT PHASE, WHETHER THEY'RE REALLY READY TO  
26 QUIT, RIGHT?  
27 A. THAT'S SORT OF ANOTHER WAY OF JUST LOOKING AT  
28 MOTIVATION IN TERMS OF WHETHER THEY ARE READY TO IT.  
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6701

1 Q. YOU LOOK AT THEIR ENVIRONMENT?  
2 A. YES.  
3 Q. WHAT KIND OF SUPPORT SYSTEM THEY HAD?  
4 A. YES.  
5 Q. RIGHT. WHETHER PEOPLE ARE ENCOURAGING THEM TO  
6 QUIT?  
7 A. YES.  
8 Q. AND WHAT KIND OF PERSON THEY ARE, WHETHER THEY,  
9 YOU KNOW, RELY ON OTHER PEOPLE TO HELP THEM WITH THOSE OR  
10 WHETHER THEY'RE THE KIND OF PERSON WHO SAYS, I'M GOING TO DO  
11 IT ON MY OWN, I'M GOING TO DO IT WHEN I'M READY?  
12 A. YES.  
13 Q. THOSE ARE ALL JUST DIFFERENT WAYS OF DESCRIBING  
14 MOTIVATION?  
15 A. THOSE ARE PARTS OF MOTIVATION, YES.  
16 Q. NOW, ONE COMPLICATION YOU DESCRIBED IS PEOPLE  
17 WHO MIGHT RATIONALIZE OR DENY WHAT THEY'RE DOING IS BAD FOR  
18 THEM, RIGHT?  
19 A. YES. THAT'S COMMON. MOST SMOKERS DO THAT TO  
20 SOME DEGREE --  
21 Q. WELL --  
22 A. -- OR OTHER.  
23 Q. MOST OF US DO IT, NOT JUST SMOKERS, RIGHT?  
24 A. YES.  
25 Q. I MEAN, SOME OF US WHO MIGHT EAT TOO MUCH MIGHT  
26 GO THROUGH RATIONALIZATION AND DENIAL?  
27 A. YES, THAT'S COMMON BEHAVIOR.  
28 BUT FOR DRUG ADDICTIONS, IT'S PRETTY MUCH  
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6702

1 UNIFORM AND OFTEN TO A MUCH GREATER DEGREE.  
2 Q. PEOPLE DO IT WHO USE VERY SEVERE NARCOTICS,  
3 LIKE COCAINE AND HEROIN?  
4 A. YES.  
5 Q. PEOPLE DO IT WITH ALCOHOL?  
6 A. YES.  
7 Q. AND THAT STILL DOESN'T TAKE AWAY THEIR  
8 RESPONSIBILITY TO QUIT, DOES IT?  
9 A. NO. IT JUST EXPLAINS WHY THEY ARE MORE OR LESS  
10 MOTIVATED.  
11 Q. SO IT ALL GOES BACK TO MOTIVATION?  
12 A. WELL, THE MOTIVATION ISSUE GOES BACK TO THE  
13 ISSUE WE TALKED ABOUT BEFORE, MOTIVATION OF THE DECISION TO  
14 QUIT. AND IT'S WHAT FACTORS INFLUENCED MOTIVATION, AND IT'S  
15 THE SAME. IT'S THE FREE CHOICE QUESTION.  
16 WHEN THE BALANCE IS THAT SMOKING IS BAD ENOUGH  
17 TO MAKE ME WANT TO GIVE UP WHAT I THINK I GET, THE POSITIVE

18 PARTS OF SMOKING AND SUFFER THROUGH THE WITHDRAWAL SYMPTOMS,  
19 THEN I'M MOTIVATED ENOUGH TO QUIT.  
20 Q. WELL, LOTS OF PEOPLE HAVE QUIT WHO SUFFER  
21 THROUGH WITHDRAWAL SYMPTOMS?  
22 A. YES.  
23 Q. AND THAT'S NOT MINIMIZING WHAT THEY'VE DONE,  
24 BECAUSE FOR SOME FOLKS, IT'S HARD?  
25 A. YES. IT IS HARD FOR MOST OF THOSE PEOPLE.  
26 Q. BUT LOTS OF PEOPLE HAVE DONE IT. YOU REPORTED  
27 THAT IN THE SURGEON GENERAL'S REPORT, RIGHT?  
28 A. YES.  
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6703

1 Q. 50 MILLION AMERICANS HAVE QUIT SMOKING?  
2 A. YES.  
3 Q. 1.5 MILLION OR SO QUIT EVERY YEAR?  
4 A. SOMEWHERE AROUND A MILLION. I DON'T REMEMBER  
5 EXACTLY HOW MANY.  
6 Q. AND SOME PEOPLE HAVE TO DO IT OVER AND OVER  
7 AGAIN BEFORE THEY CAN QUIT?  
8 A. YES.  
9 Q. AND YOU LOOK AT THE SERIOUSNESS OF THEIR QUIT  
10 ATTEMPTS, AS YOU CALL THEM, RIGHT, TO DETERMINE THAT?  
11 A. YES.  
12 Q. GOING THROUGH THE MOTIONS IS NOT A SERIOUS QUIT  
13 ATTEMPT, IS IT?  
14 A. WELL, I'M NOT SURE WHAT YOU MEAN BY GOING  
15 THROUGH THE MOTIONS.  
16 BUT WHAT'S BEEN USED BY THE PUBLIC HEALTH  
17 COMMUNITY IS AN INTENTION TO QUIT AND NOT SMOKING FOR AT  
18 LEAST A DAY.  
19 Q. WELL, WE'LL GET TO THAT IN A MINUTE AND LOOK AT  
20 MR. RELLER'S QUIT ATTEMPTS THAT YOU JUST DESCRIBED.  
21 BUT GOING THROUGH THE MOTIONS IS NOT EVIDENCE  
22 OF A MOTIVATED ATTEMPT TO QUIT, IS IT?  
23 A. WHAT DO YOU MEAN EXACTLY, GOING THROUGH THE  
24 MOTIONS?  
25 Q. WELL, YOU READ MR. RELLER'S DEPOSITION?  
26 A. YES.  
27 Q. AND YOU READ WHEN -- WHERE HE SAID HE WAS  
28 DOING -- HE WAS PARTICIPATING IN SOME OF THESE PROGRAMS JUST  
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6704

1 TO MAKE HIS WIFE HAPPY?  
2 A. I READ THAT. BUT I ALSO READ THAT HE HAD  
3 STOPPED SMOKING LONG ENOUGH THAT HE EXPERIENCED PRETTY  
4 SUBSTANTIAL WITHDRAWAL SYMPTOMS AND SAID THAT HE STARTED  
5 SMOKING AGAIN BECAUSE HIS WITHDRAWAL SYMPTOMS WERE SEVERE,  
6 AND HE JUST HAS THIS CONSTANT URGE TO SMOKE.  
7 SO IT SOUNDS LIKE HE HAD MADE SOME EFFORTS TO  
8 TRY NOT TO SMOKE. WHETHER IT WAS MOTIVATED BY HIS WIFE, AS  
9 OPPOSED TO HIMSELF, IS A DIFFERENT QUESTION.  
10 Q. WELL, THAT'S WHAT YOU LOOKED AT. BUT I'M  
11 TALKING ABOUT WHAT HE SAID.  
12 DID YOU READ THAT HE SAID HE WAS DOING IT TO  
13 MAKE HIS WIFE HAPPY?  
14 A. RIGHT. BUT THAT DOESN'T MEAN THAT HE WAS NOT  
15 MOTIVATED TO MAKE A GOOD ATTEMPT ON THAT BASIS.  
16 Q. HE SAID HE WAS GOING THROUGH THE MOTIONS,  
17 RIGHT?  
18 A. PERHAPS, I DON'T RECALL HIS WORDS. I DON'T  
19 QUESTION IT, BUT --  
20 Q. AND SOMEONE ELSE CAN'T MAKE YOU QUIT SMOKING?

21 A. NOT UNLESS THEY PUT YOU IN PRISON.  
22 Q. THERE'S NO EVIDENCE OF THAT HERE, IS THERE?  
23 A. NO.  
24 Q. SO WE ALL KNOW IF YOUR WIFE OR YOUR PARTNER  
25 ASKS YOU TO STOP DOING SOMETHING, YOU MIGHT STOP DOING IT,  
26 RIGHT?  
27 A. YES.  
28 Q. BUT YOU MIGHT NOT IF YOU DON'T REALLY WANT TO  
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6705

1 DO IT YOURSELF?  
2 A. YES.  
3 Q. RIGHT. AND THAT CAN HAPPEN FOR OTHER THINGS.  
4 THERE'S -- THERE ARE OTHER ADDICTIONS THAT HAVE NOTHING TO DO  
5 WITH DRUGS, RIGHT?  
6 SHOPPING ADDICTION?  
7 A. THERE ARE LOTS OF DIFFERENT KINDS OF COMPULSIVE  
8 BEHAVIORS, YES.  
9 Q. GAMBLING?  
10 A. YES.  
11 Q. AND GAMBLING CAN BE INCREDIBLY DESTRUCTIVE TO A  
12 FAMILY, CAN'T IT?  
13 A. YES.  
14 Q. AND FAMILY MEMBERS CAN SAY YOU'RE BANKRUPTING  
15 US?  
16 A. YES.  
17 Q. YOU'RE DESTROYING OUR FAMILY?  
18 A. YES.  
19 Q. WE WANT YOU TO QUIT?  
20 A. YES.  
21 Q. IT WOULD MAKE MY HAPPY IF YOU WOULD QUIT?  
22 A. YES.  
23 Q. AND THE PERSON DOESN'T QUIT?  
24 A. SOMETIMES.  
25 Q. SOMETIMES THEY DO, RIGHT?  
26 A. YES.  
27 Q. DEPENDING ON THE PERSON?  
28 A. YES.  
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6706

1 Q. NOW, IN THIS CASE, MR. RELLER WENT TO A PROGRAM  
2 AS SOON AS HE MET MRS. RELLER, THE SEVENTH-DAY ADVENTIST  
3 PROGRAM, RIGHT?  
4 A. YES.  
5 Q. ARE YOU FAMILIAR WITH THAT PROGRAM?  
6 A. NOT SPECIFICALLY. I'VE NOT REVIEWED THEIR  
7 MATERIALS, FOR EXAMPLE.  
8 Q. SO YOU DON'T KNOW WHETHER OR NOT THEY SHOWED A  
9 FILM WITH DR. OSCHNER THAT ADVISED PEOPLE THAT SMOKING CAUSED  
10 LUNG CANCER AND SMOKING WAS DANGEROUS?  
11 A. I DON'T KNOW THAT SPECIFICALLY.  
12 Q. AND YOU DON'T KNOW WHETHER THEY SHOWED A FILM  
13 OF AN ACTUAL LUNG SURGERY?  
14 A. I DON'T KNOW.  
15 Q. NOW, THOSE -- IF THEY DID, THAT WOULD BE WAYS  
16 TO ADVISE THE PARTICIPANTS THAT SMOKING'S BAD FOR THEM,  
17 RIGHT?  
18 A. YES.  
19 Q. IN FACT, A VERY COMMON ELEMENT OF A SMOKING  
20 CESSATION IS TO TELL PEOPLE OR EDUCATE THEM ABOUT THE DANGERS  
21 OF SMOKING?  
22 A. YES.  
23 Q. AND THE FIRST THING THAT ALMOST EVERYBODY TELLS

24 A SMOKER WHO WANTS TO QUIT IS THAT SMOKING CAUSES LUNG  
25 CANCER?  
26 A. AND OTHER THINGS, YES.  
27 Q. RIGHT. BUT I MEAN --  
28 A. YES.  
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6707  
1 Q. -- THAT'S SOMETHING THAT THE SURGEON GENERAL'S  
2 BEEN SAYING SINCE 1964?  
3 A. CORRECT.  
4 Q. AND SOME PEOPLE HAVE BEEN SAYING LONG BEFORE  
5 1964?  
6 A. CORRECT.  
7 Q. JUST LIKE PEOPLE HAVE BEEN SAYING NICOTINE IS  
8 ADDICTIVE OR HABITUATING OR DEPENDENCE CAUSING FOR A LONG  
9 TIME?  
10 A. YES.  
11 Q. RIGHT. I MEAN, SCIENTISTS AND RESEARCHERS LIKE  
12 YOURSELF HAVE SAID THAT FOR A LONG TIME?  
13 A. YES.  
14 Q. RIGHT. SO THE THINGS THAT YOU SAW IN THESE  
15 PHILIP MORRIS FILMS TALKING ABOUT WHETHER STUDIES SHOWED  
16 NICOTINE WAS ADDICTIVE OR HABITUATING, THAT WASN'T SOMETHING  
17 THAT WASN'T IN THE PUBLIC LITERATURE, WAS IT?  
18 LET ME SHOW YOU DOCUMENT NO. 98.  
19 A. NO. THERE WAS WORK -- THERE WAS RESEARCH LIKE  
20 THAT THAT WAS PUBLISHED.  
21 Q. OKAY. SO PHILIP MORRIS DIDN'T KNOW ANYTHING  
22 THAT THE SCIENTIFIC COMMUNITY DIDN'T KNOW IN 1959, RIGHT?  
23 A. I DON'T KNOW IF THEY DIDN'T KNOW ANYTHING. BUT  
24 THIS PARAGRAPH DOESN'T HELP ME WITH THAT.  
25 Q. OKAY. YOU'RE NOT AWARE OF ANYTHING IN THE  
26 DOCUMENTS THAT YOU LOOKED AT ABOUT NICOTINE THAT  
27 PHILIP MORRIS WROTE DOWN THAT PEOPLE IN THE SCIENTIFIC  
28 COMMUNITY DIDN'T KNOW?  
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6708  
1 A. THE ONLY THING THAT I HAVE SEEN IS THE ANIMAL  
2 SELF-ADMINISTRATION DATA WHERE PHILIP MORRIS WAS ONE OF THE  
3 FIRST TO SHOW THAT ANIMALS WOULD PRESS A BAR TO GET NICOTINE  
4 BEFORE OTHER SCIENTISTS HAD BEEN ABLE TO SHOW THAT.  
5 Q. YOU KNOW DR. EDWARD DOMINO?  
6 A. YES.  
7 Q. DO YOU KNOW WHETHER HE DID SOME OF THAT  
8 RESEARCH A LONG TIME AGO?  
9 A. WELL, I DON'T KNOW THE SPECIFIC STUDIES, BUT I  
10 DON'T KNOW IF HE DID THAT WORK BEFORE DR. DE NOBLE DID HIS  
11 WORK.  
12 Q. WELL, YOU KNOW DR. DOMINO'S BEEN RESEARCHING  
13 NICOTINE EVEN LONGER THAN YOU HAVE, RIGHT?  
14 A. YES.  
15 Q. HE'S 78 YEARS OLD?  
16 A. YES.  
17 Q. HE'S PUBLISHED HUNDREDS AND HUNDREDS OF  
18 ARTICLES, RIGHT?  
19 A. YES. YES.  
20 Q. AND, IN FACT, YOU WERE TALKING ABOUT A DR. DUNN  
21 DOCUMENT, AND LET ME SHOW IT TO YOU. DOCUMENT 101. "MOTIVES  
22 AND INCENTIVES IN CIGARETTE SMOKING."  
23 DO YOU RECALL THAT?  
24 A. YES.  
25 Q. AND THAT WAS DESCRIBING THAT CONFERENCE DOWN IN  
26 THE VIRGIN ISLANDS?

27 A. YES.  
28 Q. YOU'RE TOO YOUNG TO HAVE ATTENDED THAT, RIGHT?  
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6709

1 A. I WAS.  
2 Q. THANKFULLY.  
3 THAT WAS 1972?  
4 A. YES.  
5 Q. THIS WAS NOT A SECRET CONFERENCE, RIGHT?  
6 A. WELL, I DON'T KNOW. I MEAN, IT WAS AN  
7 INVITATIONAL CONFERENCE. WHETHER IT WAS SECRET AT THE TIME,  
8 I HAVE NO IDEA.  
9 Q. WELL, THERE WERE LOTS OF FOLKS THAT DIDN'T WORK  
10 FOR TOBACCO COMPANIES THAT WENT TO THAT CONFERENCE, RIGHT?  
11 A. YES. THEY INVITED SCIENTISTS TO COME.  
12 Q. IN FACT, DR. DOMINO WENT TO THAT CONFERENCE,  
13 DIDN'T HE?  
14 A. MOST LIKELY. I DON'T REMEMBER FOR SURE.  
15 Q. AND AFTER THAT CONFERENCE, A BOOK WAS PUBLISHED  
16 ABOUT THE DISCUSSIONS AND THE PAPERS PRESENTED, CORRECT?  
17 A. YES.  
18 Q. ALL RIGHT.  
19 AND, YOUR HONOR, I'M GOING TO MARK THE -- A  
20 XEROX COPY OF THE BOOK. SO THAT WE DON'T --  
21 THE COURT: THE WHOLE BOOK? OKAY.  
22 MS. WILKINSON: YES.  
23 THE COURT: 111 IS NEXT UP.  
24 I'M SORRY. WHAT'S THE NAME OF THE BOOK?  
25 MS. WILKINSON: "SMOKING BEHAVIOR, MOTIVES AND  
26 INCENTIVES."  
27 (I.D. 111 - "SMOKING BEHAVIOR, MOTIVES  
28 AND INCENTIVES")  
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6710

1 Q. BY MS. WILKINSON: THIS BOOK WAS EDITED BY  
2 DR. DUNN FROM PHILIP MORRIS, RIGHT?  
3 A. YES.  
4 Q. THIS HAS BEEN AVAILABLE IN PUBLIC LIBRARIES FOR  
5 A LONG TIME?  
6 A. YES.  
7 Q. AND IN IT ARE ARTICLES FROM PEOPLE LIKE  
8 DR. DOMINO, THIS FIRST ONE, "NEUROPSYCHOPHARMACOLOGY OF  
9 NICOTINE IN TOBACCO SMOKING"?  
10 A. YES.  
11 Q. THIS WAS PUBLISHED IN 1973?  
12 A. YES.  
13 Q. LET'S JUST -- SO WE GET IT RIGHT.  
14 COPYRIGHTED 1973?  
15 A. YES.  
16 Q. AND THERE'S AN ARTICLE IN HERE.  
17 DR. DUNN DIDN'T WRITE ALL THESE ARTICLES,  
18 RIGHT?  
19 A. NO. HE EDITED THE BOOK, BUT THE ARTICLES ARE  
20 REALLY SUMMARIES OF PRESENTATIONS BY DIFFERENT SCIENTISTS.  
21 Q. AND SOME OF THESE ARTICLES DON'T SAY THINGS  
22 THAT PHILIP MORRIS OR THE TOBACCO COMPANIES LIKED BACK THEN,  
23 RIGHT?  
24 A. I DON'T KNOW WHAT THEY LIKED. BUT THEY WERE  
25 NOT WRITTEN BY PHILIP MORRIS EMPLOYEES.  
26 Q. OKAY. AND HAVE YOU EVER HEARD OF SEYMOUR KETY?  
27 A. YES.  
28 Q. VERY WELL-REGARDED SCIENTIST, RIGHT?  
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1 A. YES.

2 Q. HE WROTE AN ARTICLE IN HERE ENTITLED, "THE  
3 MOTIVATIONAL FACTORS IN CIGARETTE SMOKING, A SUMMARY"?

4 A. YES.

5 Q. DO YOU THINK YOU'VE EVER READ THAT?

6 A. I MAY HAVE. I DON'T RECALL WHAT'S IN IT. I  
7 PROBABLY DID READ IT AT SOME TIME.

8 Q. WELL, I WAS LOOKING THROUGH IT, AND THERE IS A  
9 PARAGRAPH AT THE END THAT I WANTED TO ASK YOU ABOUT BECAUSE  
10 IT WAS WRITTEN IN 1972, AND I WAS WONDERING IF YOU THINK IT'S  
11 STILL TRUE TODAY. SO I'M GOING TO PUT IT UP.

12 IN FACT, SINCE YOU PROBABLY READ SLOWER THAN I  
13 DO, COULD YOU READ IT, STARTING WITH "ALTHOUGH," AND TELL ME  
14 IF YOU CAN'T SEE IT.

15 A. (READING:)

16  
17 ALTHOUGH IT MAY BE PREMATURE  
18 TO PROPOSE A SPECIFIC HYPOTHESES REGARDING  
19 THE PHARMACOLOGY OF NICOTINE IN THE CENTRAL  
20 NERVOUS SYSTEM, IT IS PROBABLY USEFUL AND  
21 COMPATIBLE WITH MOST OF THE OBSERVATIONS TO  
22 REGARD THE MOTIVATION TO SMOKE, LIKE MANY  
23 OTHER MOTIVATIONS, AS A MULTI-PHASED PROBLEM  
24 WITH SOME GENETIC COMPONENTS, BUT LARGELY  
25 ACQUIRED, DEPENDING UPON SOME SIMPLE  
26 BIOLOGICAL MECHANISMS, BUT WITH A MASSIVE  
27 INPUT AND MODULATION WHICH IS COGNITIVE IN  
28 NATURE, MOLDED BY CULTURE AND INDIVIDUAL

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6712

1 EXPERIENCE.

2  
3 Q. THAT'S A PRETTY GOOD SUMMARY OF THE CURRENT  
4 VIEWS ON ADDICTION, ISN'T IT, AND NICOTINE'S EFFECT?

5 A. I THINK IT IS VALID. THERE MAY BE SOME  
6 QUESTIONS AS TO WHAT THE RELATIVE CONTRIBUTIONS ARE OF  
7 PHARMACOLOGY VERSUS ENVIRONMENT, BUT, IN GENERAL, I WOULD  
8 AGREE WITH IT.

9 Q. I MEAN, WAY BACK IN 1972, HE'S TALKING ABOUT  
10 WHAT YOU SAY, THE GENETIC COMPONENTS THAT MIGHT BE THERE,  
11 RIGHT?

12 A. YES.

13 Q. HE -- MAYBE THE SIMPLE BIOLOGICAL MECHANISMS  
14 MAY MAKE YOU BRISTLE BECAUSE YOU SPENT YOUR LIFE STUDYING  
15 THAT, AND IT MAY NOT BE SO.

16 AM I RIGHT?

17 A. YES.

18 Q. IN FACT, WE STILL DON'T KNOW ABOUT HOW NICOTINE  
19 AFFECTS THE BRAIN?

20 A. CORRECT.

21 Q. RIGHT. BUT YOU KNOW THERE IS SOME BIOLOGICAL  
22 MECHANISM THERE?

23 A. YES.

24 Q. BUT YOU ALSO AGREE THAT CULTURE AND INDIVIDUAL  
25 EXPERIENCE HAS A HUGE IMPACT ON SMOKING AND ADDICTION, RIGHT?

26 A. YES.

27 Q. SO THIS WAS PUBLICIZED IN 1972 BY A GUY FROM  
28 PHILIP MORRIS AVAILABLE TO ANYONE WHO WAS INTERESTED IN  
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6713

1 READING ABOUT SUCH THINGS, RIGHT?

2 A. PUBLICIZED?

3 Q. PUBLISHED, I SHOULD SAY.  
4 A. PUBLISHED, YES.  
5 Q. THANK YOU.  
6 AND THIS ARTICLE WAS WRITTEN BY SEYMOUR KETY AT  
7 THE TIME HE WAS AT THE HARVARD MEDICAL SCHOOL OF  
8 MASSACHUSETTS GENERAL HOSPITAL.  
9 THAT'S A PRETTY PRESTIGIOUS PLACE TO WORK,  
10 RIGHT?  
11 A. YES.  
12 Q. HE WASN'T UNDER THE CONTROL, AS FAR AS YOU  
13 KNOW, OF THE TOBACCO COMPANIES, WAS HE?  
14 A. NO.  
15 Q. NEVER HAS BEEN?  
16 A. I DON'T KNOW. I'M NOT AWARE OF IT IF HE WAS.  
17 Q. OKAY. HE HAS A VERY GOOD REPUTATION IN THE --  
18 A. YES.  
19 Q. -- SCIENTIFIC COMMUNITY, RIGHT?  
20 A. YES.  
21 Q. SO THESE THINGS WERE -- HAVE BEEN WELL-KNOWN  
22 AND THE OTHER THINGS CONTAINED IN THIS BOOK SINCE 1972?  
23 A. WHICH THINGS?  
24 Q. THOSE GENERAL PROPOSITIONS?  
25 A. YES.  
26 Q. THE QUESTION, THOUGH, IS, WHAT ARE THE  
27 SPECIFICS FOR THE INDIVIDUAL, RIGHT?  
28 WHAT DO WE KNOW ABOUT A PARTICULAR INDIVIDUAL  
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6714  
1 THAT WILL TELL US MORE THAN THERE'S SOME BIOLOGICAL PART OF  
2 NICOTINE, RIGHT, THAT MAKES SOMEONE WANT TO SMOKE?  
3 A. YES.  
4 Q. THERE'S SOME CULTURAL OR PERSONAL EXPERIENCES  
5 THAT AFFECT THEIR DESIRE TO SMOKE?  
6 A. WELL, CERTAINLY THEIR INITIATION.  
7 Q. WELL, YOU SAID DURING YOUR DIRECT EXAMINATION  
8 THAT PEOPLE SMOKE FOR NICOTINE, RIGHT?  
9 A. YES. PEOPLE DO NOT SMOKE IN THE ABSENCE OF  
10 NICOTINE.  
11 Q. RIGHT.  
12 AND YOU EVEN SAID PEOPLE WILL NOT SMOKE  
13 NICOTINE-FREE CIGARETTES?  
14 A. CORRECT.  
15 Q. YOU BASED THAT ON RESEARCH YOU'VE DONE  
16 YOURSELF?  
17 A. YES. AND OTHER THINGS, THE EXPERIENCE THAT  
18 PHILIP MORRIS HAD WITH NEXT CIGARETTES, FOR EXAMPLE.  
19 Q. WELL, YOU'VE DONE SOME OF THIS RESEARCH USING  
20 PHILIP MORRIS CIGARETTES, RIGHT?  
21 A. YES.  
22 Q. YOURSELF?  
23 YOU'VE GOTTEN THESE NICOTINE-FREE CIGARETTES  
24 THAT WERE MANUFACTURED BY THE R&D DEPARTMENT AT  
25 PHILIP MORRIS?  
26 A. YES.  
27 Q. BECAUSE NOT EVERYBODY MAKES NICOTINE-FREE  
28 CIGARETTES?  
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6715  
1 A. YES.  
2 Q. PART OF THE REASON THEY DON'T MAKE THEM IS  
3 PEOPLE DON'T LIKE TO BUY THEM?  
4 A. RIGHT.  
5 Q. AND YOU'RE SAYING IT'S ONLY BECAUSE OF THE

6 NICOTINE AND THE NICOTINE BEING DOWN, RIGHT, FROM THE  
7 CIGARETTES; IS THAT WHAT YOU'RE SAYING?  
8 A. THAT PEOPLE WON'T SMOKE THEM?  
9 Q. YEAH.  
10 A. YES. ALTHOUGH THE CONCEPT OF LOWER NICOTINE  
11 CIGARETTES MIGHT BE VIABLE IF INTRODUCED IN A DIFFERENT WAY,  
12 I DON'T THINK IT'S REASONABLE TO EXPECT PEOPLE TO GO FROM  
13 SMOKING A MILLIGRAM CIGARETTE, AND THEN ALL OF A SUDDEN GOING  
14 DOWN .1 BECAUSE IT'S TOO MUCH OF A CHANGE. BUT I THINK ONE  
15 COULD BE GRADUALLY WEANED DOWN.  
16 Q. OKAY. SO IF THERE WAS A .1 MILLIGRAM OF TAR  
17 CIGARETTE, WHICH WOULD CORRESPONDINGLY HAVE A LOW NICOTINE,  
18 RIGHT?  
19 A. WELL, YES -- I WAS TALKING ABOUT .1 MILLIGRAMS  
20 NICOTINE. .1 TAR WOULD BE .01 NICOTINE. THAT WOULD BE VERY  
21 CLOSE.  
22 Q. THAT WOULD BE VERY CLOSE. NOT MANY SMOKERS  
23 WOULD CHOOSE TO SMOKE THAT, WOULD THEY?  
24 A. NO, THAT'S VIRTUALLY NICOTINE FREE.  
25 Q. YOU'RE AWARE THAT THE CAMBRIDGE MANUFACTURED BY  
26 PHILIP MORRIS IN 1980 HAD FTC MEASUREMENTS ON WHAT WE'VE JUST  
27 DESCRIBED, RIGHT?  
28 A. NO, THAT WAS 1 MILLIGRAM TAR, WITHOUT .1  
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6716  
1 MILLIGRAM NICOTINE, AS I RECALL.  
2 Q. 1 MILLIGRAM TAR?  
3 A. YES.  
4 Q. AND .1 MILLIGRAM NICOTINE?  
5 A. RIGHT.  
6 Q. YOU'RE SURE ABOUT THAT?  
7 A. YES. BECAUSE THE STANDARD CIGARETTE IS LIKE  
8 12 MILLIGRAMS TAR, 1 MILLIGRAM NICOTINE.  
9 Q. WE'RE TALKING ABOUT THE SAME THING, THE  
10 CAMBRIDGE CIGARETTE IN 1980?  
11 A. THE ULTRA LOW-YIELD CIGARETTE.  
12 Q. IN 1980, THAT'S THE KEY TIME?  
13 A. YES.  
14 Q. WHEN IT CAME OUT ON THE MARKET, RIGHT?  
15 A. YES.  
16 Q. NOW, THERE'S NO EVIDENCE IN THE WORK YOU DID  
17 WITH MR. RELLER THAT HE EVER TRIED A REDUCED TAR OR NICOTINE  
18 CIGARETTE?  
19 A. NO.  
20 Q. LET ME SEE IF I CAN REFRESH YOUR RECOLLECTION.  
21 I'M GOING TO SHOW WHAT WAS PREVIOUSLY MARKED  
22 AS -- ONE MOMENT -- 25. AND THIS IS A PICTURE OF THAT  
23 CIGARETTE WE WERE JUST TALKING ABOUT, DR. BENOWITZ, AND MAYBE  
24 I JUST MIGHT BE RIGHT HERE.  
25 DO YOU SEE THAT .1 MILLIGRAM OF TAR?  
26 CAN YOU SEE IT?  
27 LESS THAN .1?  
28 A. YES. I DO SEE THAT.  
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6717  
1 Q. OKAY. DOES THAT REFRESH YOUR RECOLLECTION THAT  
2 PERHAPS --  
3 A. WELL, I JUST NEVER REGISTERED THIS.  
4 I DID SOME RESEARCH WITH ULTRA LOW-YIELD  
5 CIGARETTES. I THINK THEY WERE CAMBRIDGE. MAYBE THEY WERE  
6 CARLTON. THE ONES I USED WERE, LIKE, 1 MILLIGRAM TAR, WHICH  
7 IS PRETTY LOW BECAUSE THE AVERAGE CIGARETTE HAS GOT  
8 12 MILLIGRAMS --



9 Q. SO THIS --  
10 A. -- WHICH IS EVEN LOWER.  
11 Q. LET'S ASSUME FOR NOW YOU'RE WRONG FOR A  
12 MINUTE --  
13 A. YES.  
14 Q. -- AND THAT THIS IS RIGHT. THAT IT WAS .1  
15 MILLIGRAM OF TAR.  
16 THAT'S AN EXTRAORDINARILY LOW TAR AND NICOTINE  
17 CIGARETTE?  
18 A. YES.  
19 Q. RIGHT?  
20 AND BASED ON YOUR RESEARCH, ALMOST NOBODY'S  
21 GOING TO WANT TO SMOKE THAT CIGARETTE WHO'S A REGULAR SMOKER?  
22 A. WELL, IT DEPENDS. AND THIS GETS A LITTLE BIT  
23 COMPLICATED, BUT -- BUT IT DEPENDS HOW THE CIGARETTE IS  
24 CONSTRUCTED.  
25 LIKE THE CIGARETTES -- THE RESEARCH CIGARETTES  
26 THAT WE WERE TALKING ABOUT A FEW MINUTES AGO ARE -- CONTAIN  
27 NOT MUCH NICOTINE, BECAUSE NICOTINE HAS BEEN EXTRACTED FROM  
28 THEM.  
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6718

1 THE COMMERCIAL CIGARETTES, LIKE THIS CAMBRIDGE,  
2 REALLY HAVE NICOTINE IN THEM, BUT THEY'RE HIGHLY VENTILATED,  
3 SO THE SMOKER GETS IN A LOT OF AIR.  
4 Q. RIGHT.  
5 A. SO SMOKERS CAN GET MUCH MORE FROM THESE  
6 CIGARETTES IF THEY BLOCK THE VENTILATION HOLES OR BREAK OFF  
7 THE FILTER. A BUNCH OF THINGS YOU CAN DO. SO YOU CAN GET  
8 TREMENDOUSLY MORE NICOTINE FROM THIS CIGARETTE. BUT  
9 YOU -- BUT YOU CAN'T GET IT FROM THE RESEARCH CIGARETTES.  
10 Q. BUT IF THEY DID THAT, THEN THIS CERTAINLY  
11 WOULDN'T BE A SAFER CIGARETTE IF THEY DID THE THINGS YOU'RE  
12 TALKING ABOUT, RIGHT?  
13 A. THAT'S CORRECT.  
14 Q. THERE'S NO EVIDENCE THAT THE CAMBRIDGE  
15 CIGARETTE WAS A SAFER CIGARETTE?  
16 A. RIGHT.  
17 Q. IN FACT, YOU'RE NOT AWARE OF ANY CIGARETTE, I  
18 THINK YOU'VE TOLD ME, OR ANY CIGARETTE DESIGN THAT IS SAFER?  
19 A. WELL, CERTAINLY NOT -- CERTAINLY NO COMMERCIAL  
20 CIGARETTES. AND NONE THAT ARE PROVEN TO BE SAFER.  
21 Q. AND NONE THAT YOU CAN GET SMOKERS TO SMOKE?  
22 A. WELL, NOT THE WAY THEY'VE BEEN INTRODUCED.  
23 Q. RIGHT.  
24 AND PART OF THE PROBLEM, AS YOU WERE SAYING, IS  
25 PEOPLE SMOKE TO GET A CERTAIN AMOUNT OF NICOTINE?  
26 A. YES.  
27 Q. AND SOMETIMES, THEY DESCRIBE THAT AS TASTE?  
28 A. YES.

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6719

1 Q. AND SOMETIMES, THAT'S TAR AND NICOTINE TOGETHER  
2 THAT THEY DESCRIBE AS TASTE, RIGHT?  
3 A. YES.  
4 Q. BECAUSE SMOKE HAS A BITTER TASTE TO IT  
5 SOMETIMES?  
6 A. YES.  
7 Q. PEOPLE ACTUALLY THINK THAT TASTES GOOD?  
8 A. WELL, THEY -- THEY'RE USED TO IT, AND THAT'S  
9 PART OF WHAT THEY'RE USED TO FROM THEIR CIGARETTE, AND THAT  
10 IS A CUE TO NICOTINE AS WELL.  
11 Q. I DON'T KNOW IF YOU DRINK, BUT THAT'S TRUE WITH

12 ALCOHOL, ISN'T IT?  
13 ALCOHOL IS NOT ALWAYS THE SWEETEST, TASTIEST  
14 THING EVERY TIME YOU HAVE -- WHEN YOU FIRST DRINK IT?  
15 A. THERE ARE SOME THAT ARE MORE BITTER THAN  
16 OTHERS.  
17 Q. AND TEA HAS BITTER FLAVOR SOMETIMES?  
18 A. YES.  
19 Q. BITTER IS NOT ALWAYS A BAD FLAVOR?  
20 A. THAT'S WHAT I SAID. PEOPLE GET USED TO THEIR  
21 CIGARETTE TASTES, AND THEN THEY COME TO LIKE IT.  
22 Q. BUT THE POINT IS, TO MAKE A CIGARETTE SAFER, IT  
23 ACTUALLY HAS TO BE A CIGARETTE PEOPLE WILL SMOKE BECAUSE IT  
24 DOESN'T DO ANY GOOD TO HAVE, AS YOU SAID, THESE NICOTINE-FREE  
25 CIGARETTES IF PEOPLE WON'T SMOKE THEM?  
26 A. THAT'S TRUE.  
27 Q. RIGHT. CONSUMER ACCEPTABILITY IS AN IMPORTANT  
28 PART OF IT?  
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6720

1 A. YES.  
2 Q. AND YOUR EXPERIENCE THUS FAR, AND WHEN YOU  
3 EITHER TAKE OUT THE NICOTINE ALTOGETHER, OR YOU REDUCE IT SO  
4 FAR THAT, YOU KNOW, THEY HAVE TO DEFEAT THE DESIGN TO GET THE  
5 NICOTINE THEY WANT, THAT'S NOT GOING TO BE A SAFER CIGARETTE?  
6 A. RIGHT. SO FAR, THAT'S CORRECT.  
7 Q. WHEN YOU WERE TALKING ABOUT FREE CHOICE, YOU  
8 DID NOT MEAN TO SUGGEST, DID YOU, THAT NICOTINE OR CIGARETTE  
9 SMOKE IMPAIRS SOMEBODY'S VOLITIONAL CONTROL?  
10 A. NO. WHAT I MEANT TO SAY --  
11 Q. WELL, JUST YES OR NO, AND WE'LL GET TO THAT.  
12 DID YOU MEAN TO SUGGEST THAT?  
13 A. WELL, TELL ME WHAT YOU MEAN BY VOLITIONAL  
14 CONTROL.  
15 Q. WELL, WHY DON'T YOU TELL ME YOUR UNDERSTANDING  
16 AS A SCIENTIST.  
17 WHAT DOES VOLITIONAL CONTROL MEAN?  
18 A. WELL, BASICALLY, IT'S VOLUNTARY BEHAVIOR. WHAT  
19 I WAS TALKING ABOUT, WHAT IS INFLUENCING A DECISION, WHICH  
20 INCLUDES, YOU KNOW, A SUPPOSEDLY VOLUNTARY DECISION. THOSE  
21 DECISIONS ARE MADE ON THE BASIS OF ONE'S PAST EXPERIENCE,  
22 ONE'S BIOLOGY, A BUNCH OF OTHER THINGS. SO --  
23 Q. SO YOU'RE TALKING ABOUT THE INFLUENCES ON FREE  
24 CHOICE. YOU'RE NOT SAYING SOMEONE DOESN'T HAVE FREE CHOICES  
25 WHEN THEY SMOKE?  
26 A. WELL, IT DEPENDS WHAT YOU MEAN BY FREE CHOICE.  
27 IT'S NOT -- IF YOU ARE ADDICTED, IT'S DIFFICULT TO SAY, WELL,  
28 SMOKING IS NOT A GOOD THING TO DO, I'LL JUST QUIT. BECAUSE  
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6721

1 THAT WHOLE DECISION MAKING IS VERY STRONGLY INFLUENCED BY THE  
2 FACT THAT YOU USE YOUR CIGARETTES TO COPE WITH STRESS EVERY  
3 DAY, AND YOU FEEL TERRIBLE WHEN YOU DON'T QUIT. SO THAT  
4 INFLUENCES THE CHOICES THAT YOU MAKE. SO, WHEREAS WHILE IT'S  
5 TRUE THERE'S NOTHING THAT PHYSICALLY IMPAIRS SOMEONE'S BRAIN  
6 FROM FUNCTIONING TO MAKE DECISIONS, THAT'S TRUE, BUT FREE  
7 CHOICE IS VERY MUCH INFLUENCED BY ADDICTION.  
8 Q. OKAY. BUT THERE'S LOTS OF FOLKS WHO ARE HIGHLY  
9 ADDICTED AND HAD HAD A HARD TIME QUITTING BUT DID IT, RIGHT?  
10 A. YES.  
11 Q. SO YOU AREN'T TELLING THIS JURY -- YOU AREN'T  
12 DISTINGUISHING -- LET'S GO BACK -- FOR US, IN GIVING US ANY  
13 INFORMATION THAT CAN TELL US -- WHOOPS. HOLD ON. I'VE GONE  
14 BACK TOO FAR HERE -- BETWEEN MR. RELLER AND SOMEBODY ELSE,

15 WHO HAS SIMILAR BIOLOGY AND ENVIRONMENTAL INFLUENCES, RIGHT?  
16 A. WHAT'S THE QUESTION AGAIN?  
17 Q. YOU AREN'T GIVING US ANY PARTICULAR INFORMATION  
18 TO EXPLAIN TO US WHY MR. RELLER COULD HAVE QUIT; AS YOU SAID,  
19 HE COULD HAVE QUIT AT A PARTICULAR TIME, VERSUS SOMEBODY ELSE  
20 WHO MAY BE, IN 1964 -- LET'S ADD 1964 -- DID QUIT WHEN THE  
21 SURGEON GENERAL SAID SMOKING CAUSED LUNG CANCER?  
22 A. WELL, THE ONLY THING THAT WE KNOW ABOUT  
23 MR. RELLER THAT PUTS HIM AT GREATER DISADVANTAGE WITH RESPECT  
24 TO QUITTING IS HIS ALCOHOL AND DRUG ABUSE HISTORY. BECAUSE  
25 WE KNOW THAT THAT POPULATION IS MORE VULNERABLE, THAT THERE  
26 ARE SHARED GENETICS BETWEEN ALCOHOL ABUSE AND DRUG ABUSE AND  
27 SMOKING, AND PEOPLE WHO ARE ADDICTED TO OTHER DRUGS, FOR  
28 WHATEVER REASON, HAVE A GREAT DEAL MORE DIFFICULTY QUITTING  
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6722

1 SMOKING.  
2 SO THAT DOES IDENTIFY ONE STRONG RISK FACTOR  
3 FOR HIM FAILING TO QUIT OR NOT BEING MOTIVATED NOW TO QUIT.  
4 Q. OKAY. SO THAT HAS NOTHING TO DO WITH A  
5 PARTICULAR CIGARETTE HE'S SMOKING?  
6 A. WELL --  
7 Q. IT HAS TO DO WITH, AS YOU SAID, EITHER WITH HIS  
8 GENETICS OR HIS HISTORY, RIGHT?  
9 A. WELL, NICOTINE ADDICTION HAS NOTHING TO DO WITH  
10 WHAT CIGARETTE A PERSON IS SMOKING ANYWAY. AS LONG AS YOU'RE  
11 GETTING NICOTINE, IT DOESN'T MATTER WHAT BRAND YOU'RE  
12 SMOKING.  
13 Q. THERE'S NOTHING ABOUT BENSON & HEDGES OR  
14 MARLBOROS THAT STOPPED HIM FROM SMOKING -- I MEAN, STOPPED  
15 HIM FROM QUITTING?  
16 A. NO. AS LONG AS THERE'S ENOUGH NICOTINE THERE,  
17 AND THERE WAS.  
18 Q. AND THERE'S NOTHING ABOUT THE PAUL MALL  
19 CIGARETTE MANUFACTURED BY BROWN & WILLIAMSON THAT STOPPED HIM  
20 FROM QUITTING IN 1964?  
21 A. NO.  
22 Q. THEN IF WE'RE TALKING ABOUT ALCOHOLISM, AS YOU  
23 ARE, YOU WERE TALKING ABOUT, AND MAYBE -- AND I DON'T WANT TO  
24 PUT WORDS IN YOUR MOUTH -- BUT HE WAS MAYBE PREDISPOSED TO  
25 HAVE A PROBLEM WITH ADDICTIVE SUBSTANCES?  
26 A. THERE IS A SHARED GENETIC PREDISPOSITION  
27 BETWEEN ALCOHOL AND TOBACCO.  
28 Q. DID YOU FIND OUT THAT HIS FATHER HAD BEEN AN  
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6723

1 ALCOHOLIC?  
2 A. I DON'T RECALL.  
3 Q. YOU DIDN'T LEARN THAT, DID YOU?  
4 A. I DON'T REMEMBER IT. I'M NOT SURE IF I READ IT  
5 OR NOT.  
6 Q. DO YOU KNOW WHO DR. SREENIVASAN IS?  
7 A. NO.  
8 Q. YOU DIDN'T READ HER REPORT IN THIS CASE?  
9 A. I DID NOT GET HER REPORT.  
10 Q. JUST ASSUME FOR ME, AS A HYPOTHETICAL MATTER,  
11 THAT SHE DID A FACE-TO-FACE INTERVIEW WITH MR. RELLER. OKAY?  
12 A. YES.  
13 Q. AND SHE LEARNED THAT ABOUT HIM, THAT HIS FATHER  
14 HAD ALSO BEEN AN ALCOHOLIC WHO QUIT DRINKING.  
15 A. YES.  
16 Q. DOES THAT INFORM YOUR OPINIONS AT ALL ABOUT  
17 MR. RELLER AND WHETHER HE WAS PREDISPOSED TO CONTINUE SMOKING

18 BECAUSE OF EITHER GENETICS OR AN ADDICTIVE -- I DON'T KNOW IF  
19 YOU WANT TO CALL IT PERSONALITY OR BIOLOGY?  
20 A. NO. I THINK HE STILL IS LIKELY TO HAVE A  
21 HARDER TIME QUITTING BECAUSE HIS FATHER DID. I THINK THAT  
22 HIS FATHER IS ACTUALLY UNUSUAL BECAUSE MOST PEOPLE WITH  
23 ALCOHOL ABUSE PROBLEMS DO HAVE GREAT DIFFICULTY QUITTING  
24 SMOKING. BUT I STILL THINK IT PUTS HIM AT MUCH HIGHER RISK  
25 THAN A NONALCOHOL-ABUSING PERSON.  
26 Q. BUT, AGAIN, HAVING NOTHING TO DO WITH THE  
27 CIGARETTE, PARTICULAR CIGARETTES THAT HE WAS SMOKING?  
28 A. AS LONG AS THERE'S NICOTINE THERE, THE RISK IS  
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6724

1 THE SAME.  
2 Q. IS THERE ANY REASON WHY YOU DIDN'T ASK TO MEET  
3 WITH MR. RELLER FACE TO FACE?  
4 A. I THOUGHT THAT I HAD ENOUGH INFORMATION FROM  
5 SPEAKING WITH HIM OVER THE PHONE TO MAKE A COMMENT ABOUT HIS  
6 LEVEL OF ADDICTION.  
7 Q. BUT YOU'RE NOT HERE TO OPINE WHETHER HE COULD  
8 QUIT, OR ARE YOU?  
9 A. WHAT DO YOU MEAN, HE COULD QUIT?  
10 Q. WELL --  
11 A. I MEAN --  
12 Q. YOU'VE TOLD US ALMOST ALL SMOKERS ARE ADDICTED  
13 IF THEY SMOKE MORE THAN FIVE CIGARETTES A DAY.  
14 A. RIGHT. WELL, HE --  
15 Q. YOU'RE -- GO AHEAD.  
16 A. HE DIDN'T QUIT. AND SO -- AND WHAT I SAID  
17 BEFORE WAS THAT POTENTIALLY HE COULD HAVE QUIT. IF HE HAD  
18 THE PROPER INFORMATION AND MOTIVATION ABOUT HEALTH CONCERNS.  
19 I THINK IN HIS CASE, HE BELIEVED -- HE STATED THAT HE  
20 BELIEVED THAT SMOKING WAS NOT HURTING HIM.  
21 MS. WILKINSON: I'D LOVE TO FOLLOW UP ON THAT, BUT,  
22 YOUR HONOR, I THINK WE'VE ALREADY GONE PAST THE TIME.  
23 THE COURT: WE'RE GOING TO KEEP GOING. WE'VE LOST  
24 TIME THIS MORNING. WE'RE NOT GOING TO STOP.  
25 MS. WILKINSON: YES, MA'AM.  
26 Q. OKAY. DR. BENOWITZ, LET'S MOVE THROUGH THIS.  
27 YOU SAID HE DIDN'T QUIT. HE DID QUIT --  
28 A. WELL, HE --  
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6725

1 Q. -- IN 2000?  
2 A. RIGHT. HE ACTUALLY QUIT WHEN HE BECAME SICK  
3 WITH CANCER, THAT'S RIGHT.  
4 Q. ALL RIGHT. THAT'S A MAJOR ACCOMPLISHMENT,  
5 ACCORDING TO YOU?  
6 A. YES.  
7 Q. AND HE NEVER PICKED UP A CIGARETTE AGAIN, AS  
8 FAR AS YOU KNOW?  
9 A. CORRECT.  
10 Q. HIS HEALTH HAS IMPROVED FROM WHERE HE WAS IN  
11 NOVEMBER OF 2000, RIGHT?  
12 A. I BELIEVE SO.  
13 Q. AND HE STILL GOES TO WORK WHEN HE CAN, RIGHT?  
14 A. YES.  
15 Q. AND HE DOESN'T SMOKE ANYMORE, DOES HE?  
16 A. CORRECT.  
17 Q. UNLIKE SOME OTHER PEOPLE THAT YOU'VE TALKED  
18 ABOUT IN COURTROOMS WHERE THEY HAVE CONTINUED TO SMOKE?  
19 A. YES.  
20 Q. WE WERE TALKING ABOUT WHETHER YOU INTERVIEWED

21 HIM PERSONALLY, WHETHER YOU HAD ENOUGH INFORMATION, RIGHT?  
22 A. YES.  
23 Q. YOU WEREN'T ASKED BY MR. PIUZE TO OPINE WHETHER  
24 MR. RELLER COULD HAVE QUIT?  
25 A. I'M NOT SURE WHAT YOU MEAN BY COULD HAVE QUIT.  
26 I THINK HE WAS PHYSICALLY CAPABLE OF QUITTING.  
27 Q. AND YOU THINK HE WAS PHYSICALLY CAPABLE OF  
28 QUITTING IN 1964 WHEN HE WAS WARNED BY THE SURGEON GENERAL?  
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6726

1 A. I THINK IF HE HAD REALLY BELIEVED THAT SMOKING  
2 WAS HURTING HIM, HE COULD HAVE QUIT.  
3 Q. AND THE SURGEON GENERAL'S A PRETTY GOOD SOURCE,  
4 RIGHT?  
5 A. WELL, FOR HIM, IT WAS NOT ENOUGH. I THINK IT'S  
6 A GOOD SOURCE.  
7 Q. WELL, THAT REALLY WASN'T MY QUESTION.  
8 THE COURT: HE JUST ANSWERED IT.  
9 HE JUST SAID HE THINKS IT'S A GOOD SOURCE. HE  
10 JUST ANSWERED.

11 Q. BY MS. WILKINSON: AND THE QUESTION MATTERS  
12 BECAUSE YOU THINK HE WAS ADDICTED WHEN HE WAS SMOKING THE  
13 PALL MALL CIGARETTE IN 1960, RIGHT?  
14 SO HE WAS IN THAT SITUATION STARTING AT LEAST  
15 IN 1960?

16 A. YES.  
17 Q. AND IT MATTERS BECAUSE THE RISK OF GETTING LUNG  
18 CANCER DROPS DRAMATICALLY, OR WOULD HAVE DROPPED DRAMATICALLY  
19 IF HE HAD QUIT IN 1964, RIGHT?

20 A. YES.  
21 Q. IN FACT, YOU DON'T DISAGREE WITH DR. BENOWITZ,  
22 DO YOU, THAT IF HE HAD QUIT --  
23 THE COURT: THIS IS DR. BENOWITZ.  
24 MR. PIUZE: HE IS DR. BENOWITZ.  
25 MS. WILKINSON: I'M SORRY. YOU'RE RIGHT. I MEANT TO  
26 SAY DR. BURNS. I'M SORRY.

27 Q. YOU DON'T DISAGREE WITH YOURSELF, DO YOU?  
28 A. I TRY NOT TO.

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6727

1 Q. THAT'S A TRICK QUESTION. I'M SORRY.  
2 COULD I HAVE MY WATER, MR. GARDNER?  
3 I NEED A BREAK, EVEN IF THE JUDGE WON'T GIVE ME  
4 ONE.

5 I'LL TAKE THIS ON MY TIME, YOUR HONOR.  
6 JUROR'S VOICE: YOUR HONOR, COULD WE TAKE A  
7 FIVE-MINUTE BREAK?

8 COULD ONE OF US TAKE A FIVE-MINUTE BREAK?  
9 THE COURT: ALL RIGHT. YOU HAVE EXACTLY FIVE  
10 MINUTES, AND I'M DEAD SERIOUS.

11 YOU ARE ADMONISHED THAT IT IS YOUR DUTY NOT TO  
12 CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT  
13 CONNECTED WITH THIS TRIAL OR TO FORM OR EXPRESS ANY OPINION  
14 THEREON UNTIL THE CAUSE IS FINALLY SUBMITTED TO YOU.

15 YOU HAVE TO BE BACK HERE AT FIVE MINUTES TO  
16 2:00.

17  
18 (RECESS.)  
19

20 THE COURT: RELLER VERSUS PHILIP MORRIS, BC 261796.  
21 THE RECORD SHOULD REFLECT THAT ALL TWELVE  
22 JURORS, FOUR ALTERNATES ARE PRESENT.  
23 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.

24 DR. LEWIS IS PRESENT.  
25 THE WITNESS IS PRESENT IN THE WITNESS STAND.  
26 YOU'RE STILL UNDER OATH.  
27 THE CLOCK IS TICKING.  
28 Q. BY MS. WILKINSON: DR. BENOWITZ --  
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6728

1 A. YES.  
2 Q. -- DID MR. PIUZE ASK YOU TO GIVE AN OPINION  
3 ABOUT WHETHER MR. RELLER COULD QUIT, COULD HAVE QUIT SMOKING,  
4 AT ANY PARTICULAR TIME IN HIS SMOKING HISTORY?  
5 A. I DON'T KNOW THAT HE EVER ASKED ME THAT  
6 QUESTION EXACTLY. HE ASKED ME ABOUT COMMENTING ON HOW  
7 ADDICTED HE WAS.  
8 Q. AND YOU'VE ALREADY TOLD US THAT  
9 90 PERCENT -- 80 TO 90 PERCENT OF SMOKERS ARE ADDICTED?  
10 A. YES.  
11 Q. WHEN MR. PIUZE WAS ASKING YOU ABOUT WITHDRAWAL  
12 SYMPTOMS FOR DIFFERENT DRUGS, YOU MADE A QUICK NOTE AND SAID  
13 CAFFEINE IS DIFFERENT.  
14 A. YES.  
15 Q. CAN YOU EXPLAIN WHAT YOU WERE ABOUT TO SAY?  
16 A. WELL, CAFFEINE IS DIFFERENT IN MANY RESPECTS.  
17 IT DOES HAVE PSYCHOACTIVITY.  
18 Q. REMIND US WHAT PSYCHOACTIVITY MEANS?  
19 A. IT DOES HAVE EFFECTS ON MOOD. IT'S A  
20 STIMULANT.  
21 Q. DOES IT AFFECT THE BRAIN?  
22 A. IT AFFECTS THE BRAIN.  
23 Q. HOW DOES IT AFFECT THE BRAIN?  
24 A. IT BLOCKS THE EFFECTS OF ADENOSINE, WHICH IS  
25 ANOTHER BRAIN HORMONE TRANSMITTER. IT'S A TRANSMITTER THAT'S  
26 SORT OF LIKE A TRANQUILIZING HORMONE, SO WHEN YOU BLOCK IT,  
27 YOU END UP GETTING STIMULATION.  
28 Q. YOU SAID HORMONE AND I'VE LET YOU SAY THAT A  
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6729

1 FEW TIMES, BUT REALLY, WHEN YOU'RE TALKING ABOUT THINGS IN  
2 THE BRAIN, THEY'RE NOT CALLED HORMONES; THEY'RE CALLED  
3 NEUROTRANSMITTERS, RIGHT?  
4 A. NEUROHORMONES, NEUROTRANSMITTERS. I USE A  
5 HORMONE TERM BECAUSE I THINK MOST PEOPLE ARE MORE FAMILIAR  
6 WITH THAT TERM THAN NEUROTRANSMITTER.  
7 Q. WE ARE. AND THAT HAS SOME SUGGESTIVE BEHAVIORS  
8 WHEN YOU TALK ABOUT HORMONES TO SOME OF US, RIGHT?  
9 A. IT HAS NOTHING DO WITH HORMONES IN TERMS OF  
10 MENSTRUAL CYCLES OR MENOPAUSE.  
11 Q. OKAY. WE'RE JUST MAKING THAT CLEAR.  
12 A. YES.  
13 Q. SO IF WE CAN STICK WITH NEUROTRANSMITTERS.  
14 A. OKAY.  
15 Q. IN THE BRAIN, WE'RE RELEASING  
16 NEUROTRANSMITTERS, RIGHT?  
17 A. YES.  
18 Q. AND CAFFEINE DOES SOME OF THAT?  
19 A. IT BLOCKS --  
20 Q. OR SUPPRESSES -- EXCUSE ME.  
21 A. IT BLOCKS THE EFFECTS OF A NEUROTRANSMITTER.  
22 THAT IS SORT OF A TRANQUILIZING TRANSMITTER AND RESULTS IN  
23 STIMULATION.  
24 Q. AND THAT'S A CHANGE IN THE BRAIN?  
25 A. YES. CHANGE IN BRAIN FUNCTION.  
26 Q. AND YOU BELIEVE CAFFEINE CAN BE ADDICTIVE?

27 A. WELL, IT CAN BE, BUT IT'S NOT NEARLY AS  
28 ADDICTIVE FOR PEOPLE AS CIGARETTE SMOKING.  
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6730

1 I THINK THERE ARE PEOPLE WHO DRINK SIX OR EIGHT  
2 CUPS OF COFFEE A DAY WHO CANNOT HAVE CAFFEINE WITHOUT  
3 BECOMING QUITE DISTRESSED. MAYBE 10 PERCENT OF COFFEE  
4 DRINKERS ARE ADDICTED.  
5 BUT FOR MOST PEOPLE WHO DRINK ONE OR TWO CUPS A  
6 DAY, THEY HAVE WHAT'S CALLED PHYSICAL DEPENDENCE. THEY CAN  
7 HAVE THAT, WHICH MEANS WITHDRAWAL SYMPTOMS.  
8 Q. DR. BENOWITZ, WE ONLY HAVE A HALF HOUR.  
9 I JUST ASKED YOU --  
10 A. OKAY.  
11 Q. -- CAN CAFFEINE BE ADDICTIVE?  
12 A. IT CAN BE.  
13 Q. OKAY. AND SOME PEOPLE WHO DRINK THAT ONE CUP  
14 OF COFFEE EVERY MORNING NEED THAT CUP OF COFFEE, RIGHT?  
15 A. THEY --  
16 Q. THEY BELIEVE THEY DO?  
17 A. THEY MAY. BUT THEN THAT IS OFTEN RELATED TO  
18 THE PHYSICAL DEPENDENCE THAT I WAS TRYING TO TALK ABOUT.  
19 Q. OKAY.  
20 A. WHICH MEANS THAT EVEN WITH LOW LEVELS OF  
21 CAFFEINE, IF YOU DON'T GET THAT CAFFEINE, YOU CAN BE  
22 LETHARGIC AND HAVE A HEADACHE.  
23 Q. AND YOU CAN BE GROUCHY?  
24 A. YOU COULD, BUT --  
25 Q. IRRITABILITY MIGHT BE A NICER WORD TO DESCRIBE  
26 IT?  
27 A. YOU COULD. BUT, UNLIKE NICOTINE, THE VAST  
28 MAJORITY OF PEOPLE CAN GET OFF OF CAFFEINE.  
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6731

1 Q. YOU KEEP WANTING TO COMPARE TO IT NICOTINE, AND  
2 I'M JUST ASKING YOU QUESTIONS ABOUT CAFFEINE.  
3 A. SORRY. SORRY.  
4 Q. WE'LL GET THERE. OKAY.  
5 CAFFEINE, IF PEOPLE WHO FEEL LIKE THEY'RE  
6 ADDICTED TO CAFFEINE, THEY STOP, THEY GO THROUGH SOME  
7 PHYSICAL WITHDRAWAL SYMPTOMS, RIGHT?  
8 A. MANY DO, YES.  
9 Q. DESCRIBE WHAT THEY TELL YOU THOSE SYMPTOMS ARE  
10 OF WITHDRAWING FROM CAFFEINE.  
11 A. THE MOST COMMON ONE IS FEELING LETHARGIC AND  
12 NOT HAVING MUCH ENERGY, HAVING A HEADACHE, FLU-LIKE SYMPTOMS,  
13 LETHARGY SYMPTOMS.  
14 Q. WHAT WAS THE FANCY WORD, HEDONIC DYSREGULATION,  
15 OR SOMETHING?  
16 A. RIGHT.  
17 Q. THAT'S THE BLUES. YOU FEEL DOWN, RIGHT?  
18 A. RIGHT. BUT NOT NEARLY AS PROFOUND WITH  
19 CAFFEINE THAN FROM THE DRUGS.  
20 Q. BUT CAFFEINE DOESN'T HAVE ANY PHYSICAL  
21 WITHDRAWAL SYMPTOMS THAT ARE CONSISTENT WITH ALCOHOL  
22 WITHDRAWAL, RIGHT?  
23 A. NO.  
24 Q. NOR DOES NICOTINE?  
25 A. RIGHT.  
26 Q. SO IF WE WERE RANKING THE PHYSICAL WITHDRAWAL  
27 SYMPTOMS FOR DRUGS, ALCOHOL IS HIGHER THAN NICOTINE?  
28 A. YES.  
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1 Q. IN FACT, YOU CAN DIE FROM ALCOHOL WITHDRAWAL,  
 2 RIGHT?  
 3 A. YES.  
 4 Q. YOU CAN'T DIE, AS FAR AS WE, KNOW FROM CAFFEINE  
 5 WITHDRAWAL?  
 6 A. CORRECT.  
 7 Q. AS MUCH AS WE LIKE OUR CAFFEINE, RIGHT?  
 8 A. YES.  
 9 Q. YOU WERE REVIEWING WITH MR. PIUZE, DURING YOUR  
 10 DIRECT EXAMINATION, DOCUMENT 101, WHICH WAS THE PAPER  
 11 DR. DUNN WROTE, "MOTIVES, INCENTIVES"?  
 12 A. YES.  
 13 Q. THIS, YOU BELIEVE, WAS A PRESENTATION HE MADE  
 14 BEFORE THE BOOK WAS PUBLISHED, RIGHT?  
 15 A. YES.  
 16 Q. HE MADE A PRESENTATION AT THAT CONFERENCE?  
 17 A. YES.  
 18 Q. SO HE WAS SPEAKING TO PEOPLE OUTSIDE OF  
 19 PHILIP MORRIS, RIGHT?  
 20 A. YES.  
 21 Q. AND LET'S LOOK AT WHAT HE SAID ABOUT NICOTINE.  
 22 (READING:)

23  
 24 THINK OF THE CIGARETTE PACK AS  
 25 A STORAGE CONTAINER FOR A DAY'S SUPPLY OF  
 26 NICOTINE.

27  
 28 RIGHT?

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 6733

1 A. YES.  
 2 Q. NOW, YOU SAID CAFFEINE CAN BE ADDICTIVE.  
 3 DO YOU CONSIDER IT A DRUG?  
 4 A. YES.  
 5 Q. SO IF WE TAKE, DEPENDING ON WHAT WE LIKE, DIET  
 6 COKE OR OUR COKE CAN --  
 7 THE COURT: NOW, BE NICE.  
 8 MS. WILKINSON: WE DON'T TALK ABOUT DIET COKE  
 9 BECAUSE --  
 10 THE COURT: THANK YOU. THANK YOU. THAT'S GOOD.  
 11 TALK ABOUT DIET PEPSI. JUST DON'T TALK ABOUT  
 12 DIET COKE.  
 13 Q. BY MS. WILKINSON: HERE'S A COKE CAN,  
 14 DR. BENOWITZ, AND LET'S GO THROUGH A DESCRIPTION.  
 15 CAN WE APPLY THIS -- THINK OF THE COKE CAN  
 16 AS -- THINK OF THE COKE CAN AS A STORAGE CONTAINER FOR A  
 17 DAY'S SUPPLY OF CAFFEINE.  
 18 THAT COULD BE TRUE, RIGHT?  
 19 A. IF YOU DRINK ONE CAN A DAY, YES.  
 20 Q. THE SAME FOR IF WE PUT A BUNCH OF CANS, RIGHT,  
 21 COULD BE?  
 22 A. SIX-PACK. IT DEPENDS HOW MUCH YOU DRINK.  
 23 IF THIS IS A SIX PACK, THEY'RE TALKING ABOUT  
 24 20 CIGARETTES.  
 25 Q. OKAY. IS UNOBTRUSIVELY PORTABLE; YOU CAN TAKE  
 26 YOUR COKE CAN WITH YOU, RIGHT?  
 27 A. MOST PLACES.  
 28 THE COURT: AND SOME OF US OFTEN DO.

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 6734

1 Q. BY MS. WILKINSON: ITS CONTENTS ARE INSTANTLY  
 2 ACCESSIBLE?



3 A. YES.  
4 Q. TRUE, RIGHT.  
5 IT IS READILY PREPARED FOR DISPENSING CAFFEINE?  
6 A. YES.  
7 Q. UNLESS IT'S CAFFEINE FREE, RIGHT?  
8 ITS RATE OF COMBUSTION -- WE ALL DON'T HAVE  
9 COMBUSTION. WE HAVE BUBBLES.  
10 A. CORRECT.  
11 Q. DISPENSING IS UNOBTRUSIVE TO MOST ONGOING  
12 BEHAVIOR, RIGHT?  
13 I CAN DRINK MY COKE AT MY DESK?  
14 A. DEPENDS WHAT YOU'RE DOING.  
15 Q. IN FACT, I CAN DRINK COKE MORE PLACES THAN I  
16 CAN SMOKE A CIGARETTE?  
17 A. NOWADAYS, THAT'S CORRECT.  
18 Q. NOW, WE'RE GETTING INTO THE MEASUREMENTS.  
19 THINK OF A PUFF OF SMOKE AS A VEHICLE FOR  
20 NICOTINE.  
21 SIP OF COKE, YOU'RE GET SOMETHING CAFFEINE,  
22 RIGHT?  
23 A. YES.  
24 Q. THE SMOKER HAS WIDE LATITUDE IN FURTHER  
25 CALIBRATION. PUFF VOLUME.  
26 I CAN DRINK A SMALL SIP OR BIG SIP?  
27 A. YES.  
28 Q. OR THE WHOLE CAN?  
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6735

1 A. RIGHT. THERE'S NOT NEARLY AS MUCH LATITUDE  
2 WITH A CIGARETTE, BUT THERE IS SOME LATITUDE.  
3 Q. I DON'T KNOW THE ANSWER TO THIS. YOU TELL ME.  
4 HIGHLY ABSORBABLE.  
5 IS CAFFEINE HIGHLY ABSORBABLE?  
6 A. YES.  
7 Q. RAPID TRANSFER.  
8 HOW LONG DOES IT TAKE ME TO GET THE CAFFEINE TO  
9 MY BRAIN?  
10 A. MUCH SLOWER.  
11 Q. HOW FAST?  
12 A. 30 MINUTES.  
13 Q. OKAY. NON-NOXIOUS ADMINISTRATION.  
14 THIS QUALIFIES, RIGHT?  
15 A. GENERALLY, YES.  
16 Q. I WON'T ASK WHEN IT DOESN'T.  
17 THIS IS FLOWERY LANGUAGE, RIGHT, DESCRIBING THE  
18 PACK OF CIGARETTES AND THE CIGARETTE BEING THE NICOTINE  
19 DELIVERY DEVICE?  
20 A. I'M NOT SURE IT'S FLOWERY. I THINK IT'S  
21 ACTUALLY QUITE ACCURATE.  
22 Q. IT'S JUST AS ACCURATE FOR A CAN OF COKE?  
23 A. PARTS OF IT ARE.  
24 BUT PEOPLE HAVEN'T REALLY THOUGHT OF, OR THE  
25 IDEA OF CIGARETTES BEING A NICOTINE DELIVERY DEVICE, I THINK,  
26 WAS MORE NOVEL THAN A COKE CAN AS A DELIVERY DEVICE FOR  
27 CAFFEINE.  
28 Q. SOMEONE -- SOMEONE LABELED IT THAT WAY, RIGHT?  
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6736

1 BUT AS WE JUST WENT THROUGH THE DEFINITION,  
2 YOU'RE GETTING THE CAFFEINE FROM THIS SODA?  
3 A. NO QUESTION, YES.  
4 Q. OR IF I BROUGHT YOU A STARBUCKS OR SOME OTHER  
5 COFFEE CUP, SAME THING, RIGHT?

6 A. YES.  
7 Q. YOU, THOUGH, THINK THAT CAFFEINE SHOULD BE  
8 REGULATED BY THE GOVERNMENT AS A DRUG, RIGHT?  
9 A. LABELED.  
10 Q. WELL, LABELED.  
11 YOU'VE WRITTEN TO THE FDA AND TOLD THEM THAT,  
12 RIGHT?  
13 A. YES.  
14 Q. SO YOU THINK IT'S IMPORTANT ENOUGH, IT'S EITHER  
15 DANGEROUS OR ADDICTIVE, AND IT'S WORTH LABELING, RIGHT?  
16 A. WELL, THE RISKS ARE PRIMARILY IN PREGNANCY.  
17 AND SOME BEHAVIORAL THINGS.  
18 WHAT I'VE SAID TO THE FDA IS THAT I THINK  
19 PRODUCTS SHOULD BE LABELED WITH CONTENT, SO IF YOU BUY  
20 SOMETHING YOU KNOW HOW MANY MILLIGRAMS OF CAFFEINE YOU'RE  
21 TALKING IN. SO IF YOU WANT TO GET SOMETHING WITH LITTLE  
22 CAFFEINE, YOU HAVE THAT CHOICE. OR IF YOU WANT IT WITH A LOT  
23 OF CAFFEINE, YOU HAVE THAT CHOICE.  
24 BUT I WAS -- WHAT I WAS ASKING FOR WAS CONSUMER  
25 INFORMATION, NOT REGULATION IN TERMS OF TRYING TO BAN IT OR  
26 RESTRICT IT IN ANY WAY.  
27 Q. AND YOU KNOW THE GOVERNMENT REGULATES WHAT THE  
28 TOBACCO COMPANIES CAN SAY ABOUT HOW MUCH TAR AND NICOTINE ARE  
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6737  
1 IN THEIR CIGARETTES, RIGHT?  
2 A. RIGHT. BUT THERE'S NOT INFORMATION -- IT'S  
3 MUCH LESS USEFUL IN TERMS OF THE DOSE A PERSON'S EXPOSED TO  
4 THAN IS THE CONTENT OF A CAN OF COKE.  
5 Q. AGAIN, THAT'S NOT MY QUESTION.  
6 THE POINT IS, THE GOVERNMENT CONTROLS WHAT THE  
7 TOBACCO COMPANIES CAN SAY ABOUT TAR AND NICOTINE --  
8 A. YES.  
9 Q. -- RIGHT?  
10 AND THAT'S ALL YOU'RE ASKING FOR, FOR THINGS  
11 THAT CAN CONTAIN CAFFEINE, THAT YOU WANT THE GOVERNMENT TO  
12 HAVE LABELING REQUIREMENTS?  
13 A. WELL, I'LL ANSWER YES. IT'S DIFFERENT, BECAUSE  
14 LABELING ISSUES ARE MUCH MORE COMPLICATED FOR SMOKING. BUT  
15 YES, I DO THINK BOTH SHOULD BE ACCURATELY LABELED.  
16 Q. I JUST WANT TO FINISH MY REVIEWING THIS WITH  
17 YOU.  
18 AND, YOUR HONOR, I NEED A NEW NUMBER.  
19 THE COURT: OKAY. HOW ABOUT 112, WILL THAT DO?  
20 MS. WILKINSON: GREAT.  
21 THE COURT: AND WHAT IS 112?  
22 MS. WILKINSON: THIS IS A SHORT RELLER TIME LINE.  
23 THE COURT: OKAY. RELLER TIME LINE. 112.  
24  
25 (I.D. 112 - RELLER TIME LINE BLOWUP)  
26  
27 Q. BY MS. WILKINSON: I WANT TO REVIEW WITH YOU  
28 THE FACTS ABOUT MR. RELLER'S SMOKING AND ASK YOU QUESTIONS  
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6738  
1 ABOUT EACH PARTICULAR INCIDENT.  
2 OKAY, DR. BENOWITZ?  
3 A. YES.  
4 Q. 1955, MR. RELLER STARTED SMOKING PALL MALLS,  
5 RIGHT?  
6 A. YES.  
7 Q. THERE WAS NOTHING IN THOSE PALL MALL CIGARETTES  
8 THAT STOPPED HIM FROM SMOKING -- I MEAN STOPPED HIM FROM

9 QUITTING?  
10 I APOLOGIZE.  
11 A. WHAT DO YOU MEAN?  
12 Q. WELL, THERE'S NOTHING ABOUT THAT PARTICULAR  
13 CIGARETTE THAT STOPPED HIM FROM QUITTING?  
14 A. IT'S GOT NICOTINE, LIKE EVERY OTHER CIGARETTE.  
15 Q. RIGHT. SO THERE'S NOTHING ABOUT THAT  
16 PARTICULAR CIGARETTE?  
17 A. NOTHING DIFFERENT ABOUT PALL MALL.  
18 Q. IT WAS AN UNFILTERED CIGARETTE, RIGHT?  
19 A. RIGHT.  
20 Q. IN 1962 WHEN HE SAW HIS FATHER QUIT, HE COULD  
21 HAVE QUIT SMOKING, RIGHT?  
22 A. YES, THAT'S POSSIBLE.  
23 Q. THERE WAS NOTHING PHYSICALLY PREVENTING HIM  
24 FROM --  
25 A. NO.  
26 Q. -- QUITTING?  
27 AND WE'VE ALREADY ESTABLISHED -- WELL, LET ME  
28 GET THERE.  
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6739

1 IN 1964 WHEN THE SURGEON GENERAL'S REPORT SAID  
2 SMOKING CAUSED LUNG CANCER, HE COULD HAVE QUIT?  
3 A. HE WAS PHYSICALLY CAPABLE, YES.  
4 Q. AND INSTEAD, HE DECIDED TO SWITCH TO A FILTERED  
5 CIGARETTE, RIGHT?  
6 A. YES.  
7 Q. SO HE MADE A DECISION THERE TO SWITCH?  
8 A. YES.  
9 Q. NOW, BEFORE THE BREAK, WE WERE ABOUT TO TALK  
10 ABOUT DECLINING RISK.  
11 YOU'RE FAMILIAR WITH THAT TERM, RIGHT?  
12 A. USED IN WHAT CONTEXT?  
13 Q. THAT IF SOMEONE STOPS SMOKING EARLY ON, THEIR  
14 RISK, COMPARED TO IF THEY CONTINUED SMOKING, CONTINUED TO  
15 SMOKE, WOULD DECLINE?  
16 A. THEIR HEALTH RISK?  
17 Q. YES.  
18 A. YES.  
19 Q. SO IF MR. RELLER HAD STOPPED IN 1964, HE WOULD  
20 HAVE GREATLY REDUCED HIS RISK OF CONTRACTING LUNG CANCER IN  
21 CONTRAST TO DECIDING TO CONTINUE TO SMOKE?  
22 A. YES.  
23 Q. IN FACT, IT'S VERY UNLIKELY HE WOULD HAVE  
24 GOTTEN LUNG CANCER IF HE HAD QUIT IN 1964, RIGHT?  
25 A. MUCH LESS LIKELY.  
26 Q. YOU DON'T THINK THAT THESE FIRST SEVEN YEARS OF  
27 SMOKING CONTRIBUTED TO HIS LUNG CANCER, DO YOU?  
28 A. WELL, IT'S POSSIBLE.  
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6740

1 ON AVERAGE, IT TAKES ABOUT 20 YEARS. SO IF YOU  
2 QUIT SMOKING FOR 20 YEARS, YOUR RISK IS MUCH LOWER, BUT THERE  
3 STILL IS SOME RISK ABOUT BEING A HEAVY SMOKER.  
4 Q. WELL, WHAT YOU WORRY ABOUT IN THIS EARLY PERIOD  
5 BEFORE HE SWITCHED IS THAT HE GOT ADDICTED WHEN HE WAS  
6 SMOKING PALL MALLS?  
7 A. I THINK THAT WAS THE MOST SIGNIFICANT EFFECT,  
8 THAT'S RIGHT.  
9 Q. SO THAT'S WHERE HE LOSES SOME FREE CHOICE, IS  
10 THAT WHAT YOU'RE SAYING?  
11 A. WELL, THERE'S AN INFLUENCE OF HIS FREE CHOICE,

12 THAT'S RIGHT, BECAUSE IT BECOMES HARDER FOR HIM TO MAKE A  
13 RATIONAL DECISION.  
14 Q. THAT HAPPENS AS SOON AS HE GETS ADDICTED TO  
15 PALL MALLS --  
16 A. YES.  
17 Q. -- RIGHT?  
18 NOW, YOU KNOW, WHEN HE WAS SMOKING PALL MALLS,  
19 HE SAID HE NEVER HEARD ANYTHING; IN FACT, THE WHOLE TIME,  
20 UNTIL AFTER HE SWITCHED TO PHILIP MORRIS, HE SAYS HE DIDN'T  
21 KNOW ANYTHING OR HADN'T HEARD ANYTHING THAT TOBACCO COMPANIES  
22 SAID ABOUT SMOKING, RIGHT?  
23 A. YES.  
24 Q. SO YOU DON'T HAVE ANY INFORMATION TO SAY THAT  
25 WHEN HE WAS ADDICTED, WHEN HE GOT ADDICTED TO CIGARETTES,  
26 THAT ANYTHING THE TOBACCO COMPANIES DID, ESPECIALLY  
27 PHILIP MORRIS, AFFECTED HIS DECISIONS TO SMOKE, RIGHT?  
28 A. I HAVE NO INFORMATION ABOUT THAT.  
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6741  
1 Q. OKAY. NOW, IN 1964, HE'S ALREADY ADDICTED,  
2 RIGHT?  
3 A. YES.  
4 Q. HE HEARS THE SURGEON GENERAL'S WARNING?  
5 A. YES.  
6 Q. AND HE DECIDES NOT TO QUIT, RIGHT?  
7 A. YES.  
8 Q. WELL, HE JUST DOESN'T KEEP SMOKING THE SAME  
9 CIGARETTE, RIGHT?  
10 A. RIGHT.  
11 Q. HE MAKES A DECISION TO SWITCH?  
12 A. YES.  
13 Q. TO THE FILTERED MARLBORO?  
14 A. YES.  
15 Q. AND THEN IN 1972, HE TELLS YOU, I THINK,  
16 DOESN'T HE, THAT HE NEVER EVEN TRIED TO QUIT IN '64 TO '72?  
17 A. CORRECT.  
18 Q. SO THEN EVEN THOUGH HE HAD BEEN WARNED, HE  
19 WASN'T MOTIVATED TO QUIT FROM 1964 TO 1972, RIGHT, THERE'S NO  
20 DISPUTE ABOUT THAT?  
21 A. CORRECT.  
22 Q. IN FACT, HE SAYS HE WASN'T MOTIVATED TO QUIT AT  
23 ANY TIME BEFORE 1972, RIGHT?  
24 A. THAT'S MY IMPRESSION, YES.  
25 Q. SO NO MATTER WHAT ANYBODY TOLD HIM THEN,  
26 ACCORDING TO HIS TESTIMONY, IT WASN'T GOING TO MOTIVATE HIM  
27 TO QUIT?  
28 A. WELL, I DON'T KNOW IF YOU CAN SAY DID NOT  
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6742  
1 MOTIVATE HIM. WE CAN JUST SAY THAT WHATEVER HE HEARD DID NOT  
2 MOTIVATE HIM.  
3 Q. WELL, YOU'VE TOLD US THAT THE THING THAT  
4 MOTIVATED HIM WAS WHEN HE BELIEVED HE WAS ACTUALLY GETTING  
5 HARMED, RIGHT?  
6 A. RIGHT.  
7 Q. AND IN 1972 OR SO, HE BELIEVED HE WAS GETTING  
8 HARMED, AND THIS IS -- THIS SPELLS MARINARA, DOESN'T IT?  
9 A. YES.  
10 Q. JUST CHECKING.  
11 HE THOUGHT HE WAS VOMITING BLOOD AT THAT TIME,  
12 RIGHT?  
13 A. YES.  
14 Q. HE THOUGHT SMOKING WAS LITERALLY MAKING

15 HIMSELF --  
16 A. YES.  
17 Q. -- SICK BECAUSE HE WASN'T DRINKING AT THAT  
18 POINT?  
19 A. RIGHT.  
20 Q. HE WASN'T TAKING VALIUM?  
21 A. RIGHT.  
22 Q. AND HE IMMEDIATELY ASSOCIATED HIS SICKNESS WITH  
23 SMOKING?  
24 A. YES.  
25 Q. AND HE STOPPED SMOKING?  
26 A. YES.  
27 Q. SO HE SHOWED THAT HE COULD STOP SMOKING WHEN HE  
28 WAS MOTIVATED, WHEN HE BELIEVED IT WAS AFFECTING HIM?  
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6743

1 A. RIGHT. HE STOPPED SMOKING FOR A COUPLE OF  
2 DAYS. THAT'S RIGHT.  
3 Q. SO THESE WARNINGS ON THE PACKAGE DIDN'T  
4 MOTIVATE HIM?  
5 A. NOT SUFFICIENTLY.  
6 Q. AND YOU HAVE NO REASON TO BELIEVE THERE WAS  
7 ANYTHING THAT WOULD HAVE MOTIVATED HIM TO QUIT, OTHER THAN  
8 WHEN HE BELIEVED IT WAS AFFECTING HIM?  
9 A. I THINK IT DEPENDS ON HOW SURE HE WAS ABOUT THE  
10 RISK, BECAUSE HE STATED THAT HE DID NOT THINK THERE WAS A  
11 RISK TO HIM, AND HE WAS ASSESSING INFORMATION IN GENERAL, HE  
12 WAS ASSESSING HIS OWN PERSONAL RESPONSE, AND AS LONG AS HE  
13 FELT IT WAS NOT HURTING HIM, HE WAS NOT MOTIVATED TO QUIT.  
14 Q. RIGHT. AND WHEN IT WAS, HE WAS MOTIVATED TO  
15 QUIT?  
16 A. YES.  
17 Q. THAT'S WHAT IT TOOK FOR HIM.  
18 OTHER PEOPLE ARE DIFFERENT, RIGHT?  
19 A. YES.  
20 Q. OTHER PEOPLE DON'T NEED TO WAIT UNTIL THEY FEEL  
21 LIKE THEY'RE VOMITING BLOOD TO TRY AND QUIT SMOKING?  
22 A. SOME, THAT'S RIGHT.  
23 Q. NOW, YOU WERE TALKING ABOUT THE QUIT ATTEMPT.  
24 YOU NEVER ASKED HIM ANY DETAILS ABOUT THESE SUPPOSED OTHER  
25 QUIT ATTEMPTS, RIGHT?  
26 A. THAT'S CORRECT.  
27 Q. YOU DON'T -- YOU HAVE KNOWLEDGE HE WENT TO THE  
28 SEVENTH-DAY ADVENTIST PROGRAM WITH HIS WIFE?  
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6744

1 A. YES.  
2 Q. DID HE TELL YOU THAT WHEN HE WENT TO THE  
3 HYPNOTIST, HE DIDN'T STOP SMOKING?  
4 A. I BELIEVE SO.  
5 Q. DID HE TELL YOU THAT WHEN HE HAD A COACH, HE  
6 DIDN'T STOP SMOKING?  
7 A. I THINK SO.  
8 Q. HE TOLD YOU HE DIDN'T DO WHAT YOU WOULD CALL  
9 ANY SERIOUS QUIT ATTEMPT, OTHER THAN GOING TO THE SEVENTH-DAY  
10 ADVENTIST PROGRAM, RIGHT?  
11 A. I THINK THERE WERE SEVERAL OCCASIONS WHEN HE  
12 QUIT BETWEEN TWO TO FIVE DAYS WHEN HE TALKED ABOUT WITHDRAWAL  
13 SYMPTOMS.  
14 Q. WHAT OTHER OCCASIONS WERE THOSE, DR. BENOWITZ?  
15 A. WELL, HE STOPPED FOR TWO DAYS AFTER THE  
16 VOMITING EPISODE.  
17 HE STOPPED FOR ABOUT FIVE DAYS WITH THE

18 SEVENTH-DAY ADVENTIST PROGRAM.  
19 Q. RIGHT. WE'VE TALKED ABOUT THOSE ALREADY.  
20 A. MAYBE THOSE WERE THE ONLY TWO. I DON'T  
21 HAVE -- I DON'T HAVE ANY OTHER NOTES ABOUT THAT.  
22 Q. OKAY. SO AS I SAID, HE STOPPED FOR TWO DAYS  
23 WHEN HE THOUGHT IT WAS AFFECTING HIS HEALTH?  
24 A. YES.  
25 Q. AND HE STOPPED DURING THAT ONE PROGRAM HE DID  
26 WITH HIS WIFE WHEN THEY FIRST MET?  
27 A. YES.  
28 Q. THE SEVENTH-DAY ADVENTIST PROGRAM?  
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6745

1 A. AND HE ALSO WENT THROUGH THIS AVERSIVE SMOKING,  
2 AND I GUESS THAT DID NOT MAKE HIM STOP SMOKING. USUALLY  
3 PEOPLE STOP FOR A LITTLE WHILE.  
4 Q. HE DIDN'T, THOUGH?  
5 A. AS FAR AS I KNOW.  
6 Q. YOU WOULD NOT RELATE THAT AS A QUIT ATTEMPT?  
7 A. HE DID RELATE THAT. THAT IS CORRECT.  
8 Q. WHAT YOU DO IN THESE MATTERS, IF THERE'S QUIT  
9 ATTEMPTS, IT'S NOT WHAT SOMEONE TELLS YOU; YOU EVALUATE  
10 WHETHER THAT WAS A QUIT ATTEMPT, BASED ON THE TOTAL  
11 CIRCUMSTANCES THEY DESCRIBE FOR YOU, RIGHT?  
12 A. YES.  
13 Q. SO BASED ON YOUR EXPERT OPINION, THERE ARE ONLY  
14 TWO QUIT ATTEMPTS FOR MR. RELLER, THE MARINARA SAUCE  
15 INCIDENT, AS WE'RE CALLING IT, AND THE SEVENTH-DAY ADVENTIST  
16 PROGRAM, RIGHT?  
17 A. THERE WERE TWO ATTEMPTS WHERE HE QUIT FOR MORE  
18 THAN 24 HOURS, CORRECT.  
19 Q. AND THAT'S WHAT YOU CONSIDER A QUIT ATTEMPT?  
20 A. RIGHT.  
21 Q. AND TWO OF THOSE IN 45 YEARS?  
22 A. YES.  
23 MS. WILKINSON: I HAVE NO FURTHER QUESTIONS.  
24 THE COURT: MR. PIUZE.  
25 MR. PIUZE: YEP.  
26  
27  
28

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6746

1 REDIRECT EXAMINATION  
2 BY MR. PIUZE:  
3 Q. AND I CAN DEFINITELY DO THIS ON TIME.  
4 IS SHOPPING AN ADDICTION OR COMPULSIVE  
5 BEHAVIOR, TOO MUCH SHOPPING?  
6 A. WELL, PEOPLE HAVE USED THE TERM ADDICTION.  
7 WHAT I'VE BEEN TALKING ABOUT HERE IS A DRUG ADDICTION, WHICH  
8 MEANS THAT IT'S -- IT'S A KIND OF COMPULSIVE BEHAVIOR THAT'S  
9 MOTIVATED BY THE EFFECTS OF A DRUG.  
10 NOW, SOME PEOPLE USE THE TERM ADDICTION FOR ANY  
11 KIND OF COMPULSIVE BEHAVIOR. BUT WHEN I'VE BEEN TALKING  
12 ABOUT DRUG ADDICTION, WHICH IS A VERY SPECIAL KIND OF  
13 ADDICTION --  
14 Q. SHOPPING TOO MUCH ISN'T LIKE BEING ADDICTED TO  
15 HEROIN OR COCAINE OR NICOTINE, IS IT?  
16 A. IT'S NOT HARMFUL TO YOUR HEALTH, AT LEAST NOT  
17 IN THE SAME WAY. I DON'T KNOW. THERE MAY BE SOME OTHER SIDE  
18 EFFECTS OF SHOPPING TOO MUCH THAT I DON'T KNOW ABOUT. SORE  
19 FEET OR SOMETHING.  
20 Q. YEAH, LIKE NOT HAVING ANY MONEY. OR HAVING TO

21 LUG ALL YOUR STUFF UP THE STAIRS.  
22 DR. DUNN DID EDIT THAT BOOK COMING OUT OF THE  
23 1972 CONFERENCE, BUT DID EVERYTHING MAKE IT INTO THE BOOK?  
24 A. TO MY KNOWLEDGE, HIS DESCRIPTION OF THE  
25 CIGARETTE AS A NICOTINE DELIVERY DEVICE, WHICH I FOUND TO BE  
26 THE MOST INTERESTING PART OF THE INTERNAL DOCUMENT, WAS NOT  
27 PART OF THE BOOK.  
28 Q. THANKS.  
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6747

1 YOU STARTED TO SAY A COUPLE OF TIMES HAVING TO  
2 DO WITH ULTRA-LOW NICOTINE CIGARETTES. THE POINT BEING MADE  
3 IS THEY DON'T SELL, OR WON'T SELL, AND I HEARD YOU SAY A  
4 COUPLE OF TIMES, DEPENDING ON THE WAY THEY'RE MARKETED.

5 DO YOU REMEMBER THAT?

6 A. YES.

7 Q. WHAT DID YOU WANT TO SAY?

8 WOULD YOU EXPLAIN, PLEASE.

9 MS. WILKINSON: OBJECTION, YOUR HONOR. HE'S NOT A  
10 MARKETING EXPERT.

11 THE COURT: SUSTAINED.

12 Q. BY MR. PIUZE: LET'S PUT IT THIS WAY.

13 IF ULTRA-LOW NICOTINE CIGARETTES ARE JUST  
14 SUBSTITUTED FOR A FULL NICOTINE CIGARETTE, IN OTHER WORDS,  
15 YOU'RE ASKING SOMEONE TO MAKE A LEAP FROM HERE TO HERE, IS  
16 THERE A GOOD LIKELIHOOD THEY'RE NOT GOING TO SELL?

17 A. YES. IT'S THE SAME THING THAT HAPPENED WHEN  
18 THERE WAS A SWITCH FROM NONFILTERED TO FILTERED CIGARETTES.  
19 AT FIRST, PEOPLE THOUGHT THAT FILTERED CIGARETTES TASTED  
20 TERRIBLE. THEY WERE LIKE SMOKING AIR. THEY HATED THEM.

21 BUT, OVER TIME, PEOPLE REGAINED THE TASTE AND  
22 NOW PEOPLE WHO SMOKE FILTERED CIGARETTES, AND VIRTUALLY ALL  
23 SMOKERS NOWADAYS DO, THINK THAT NONFILTER CIGARETTES ARE  
24 TERRIBLY HARSH AND TASTE TERRIBLE.

25 AND THE SAME THING CAN OCCUR WITH ULTRALIGHT  
26 CIGARETTES. IF YOU GRADUALLY REDUCE EXPOSURE, PEOPLE CAN  
27 REEDUCATE THEIR TASTES AND COULD WEAN THEIR LEVEL OF NICOTINE  
28 ADDICTION. I THINK THAT'S POSSIBLE.

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1 Q. SO RATHER THAN JUMPING FROM WHATEVER THE FULL  
2 DOSE OF NICOTINE IS TO ALMOST NOTHING, IF YOU GRADUALLY  
3 BROUGHT IT DOWN, YOU THINK IT'S POSSIBLE TO DO THAT?

4 A. I DO.

5 Q. THIS THING WITH THE COKE CAN WAS OKAY.

6 DO YOU EQUATE CAFFEINE TO NICOTINE WHEN IT  
7 COMES TO ADDICTIVENESS AND HARM?

8 A. NO. FIRST OF ALL, IF YOU LOOK AT HARM, THERE'S  
9 BEEN AN ENORMOUS AMOUNT OF RESEARCH ON CAFFEINE, AND I'VE  
10 DONE A LOT OF IT. AND THERE IS VERY LITTLE EVIDENCE THAT IS  
11 HARM FOR THE AVERAGE PERSON.

12 THE ONLY CONCERN REALLY, SO FAR AS I CAN SEE,  
13 IS DURING PREGNANCY, FOR EXCESSIVE USE DURING PREGNANCY. SO  
14 AS -- WHEREAS, THERE'S BEEN SOME QUESTION ABOUT CAFFEINE OVER  
15 THE YEARS, I DON'T THINK THAT THE INJURY FROM CAFFEINE IS  
16 SIGNIFICANT FOR SOCIETY AT ALL.

17 ADDICTIVENESS, ALSO, IS MUCH DIFFERENT. MOST  
18 PEOPLE, IF THEIR DOCTOR SAYS, SWITCH FROM -- SAY THEY'RE  
19 GETTING PALPITATIONS OR THEY'RE FEELING JITTERY OR NERVOUS,  
20 WHICH CAN HAPPEN WITH TOO MUCH CAFFEINE, AND THE DOCTOR SAYS  
21 SWITCH, VIRTUALLY EVERYONE CAN SWITCH TO DECAFFEINATED  
22 BEVERAGES OR DECAFFEINATED COFFEE. IT'S NOT A PROBLEM FOR  
23 MOST PEOPLE.

24                   THAT WILL NOT HAPPEN FOR CIGARETTE SMOKERS. SO  
25 THE HARM FROM CIGARETTE SMOKING, WHICH IS PROBABLY THE NUMBER  
26 ONE PREVENTABLE CAUSE OF DISEASE, IS SO MUCH DIFFERENT THAN  
27 THAT OF CAFFEINE. EVEN IF CAFFEINE WERE ADDICTIVE, WERE AS  
28 ADDICTIVE, WHICH IT'S NOT, IT STILL WOULDN'T RAISE TO THE  
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6749

1 SAME LEVEL OF CONCERN.

2                   SO AS A PERSON WHO HAS DONE A LOT OF WORK ON  
3 CAFFEINE, I BASICALLY HAVE STOPPED MY WORK IN THAT AREA AND  
4 FELT THAT THE BEST WE CAN DO IS MAKE SURE CONSUMERS KNOW WHAT  
5 THEY'RE GETTING SO THAT THEY CAN CHOOSE. BUT I DON'T THINK  
6 CAFFEINE IS A SUBSTANTIAL HEALTH PROBLEM.

7                   Q. SO MY WHOLE NOTES --

8                   MS. WILKINSON: DOESN'T IT SAY SPEAK SLOWLY ON THERE?

9                   MR. PIUZE: NO.

10                  Q. MR. RELLER THREW UP SAUCE, THOUGHT IT AFFECTED  
11 HIS HEALTH AND STOPPED SMOKING, AND YOU AGREED WITH  
12 MS. WILKINSON, THAT WHEN MR. RELLER THOUGHT HIS HEALTH WAS  
13 BEING AFFECTED, HE COULD STOP.

14                  YOU AGREED WITH THAT, RIGHT?

15                  A. HE CERTAINLY TRIED TO MAKE A GOOD EFFORT TO  
16 STOP, YES.

17                  Q. MR. RELLER WAS DIAGNOSED WITH LUNG CANCER AND  
18 STOPPED SMOKING CIGARETTES, AND YOU AGREED WITH MS. WILKINSON  
19 THAT MR. RELLER COULD STOP SMOKING WHEN HE THOUGHT THAT HIS  
20 HEALTH WAS BEING AFFECTED?

21                  A. YES.

22                  Q. SO WHAT IF THERE WERE BILLIONS OF DOLLARS SPENT  
23 TO CONVINCE HIM THAT HIS HEALTH WASN'T BEING AFFECTED --

24                  MS. WILKINSON: OBJECTION.

25                  Q. BY MR. PIUZE: -- DO YOU THINK THAT WOULD PLAY  
26 A ROLE IN MR. RELLER'S ABILITY TO STOP?

27                  THE COURT: DO YOU STILL HAVE AN OBJECTION?

28                  MS. WILKINSON: YES. IT CALLS FOR SPECULATION. THIS  
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6750

1 MAN IS NOT A MARKETING EXPERT.

2                  THE COURT: MOVE ON TO ANOTHER QUESTION.

3                  Q. BY MR. PIUZE: IF, AS A RESULT OF BILLIONS OF  
4 DOLLARS OF MARKETING, MR. RELLER BELIEVED THAT -- DIDN'T HE  
5 TELL YOU HE WOULDN'T GET SICK?

6                  MS. WILKINSON: YOUR HONOR, I'M GOING TO OBJECT TO  
7 THIS LINE OF QUESTIONING BASED ON SPECULATION AND THE NUMBERS  
8 MR. --

9                  THE COURT: SUSTAINED.

10                  MS. WILKINSON: THANK YOU.

11                  Q. BY MR. PIUZE: DID YOU ALREADY TESTIFY FOR US  
12 THAT MR. RELLER TOLD YOU THAT HE DIDN'T THINK SMOKING WOULD  
13 MAKE HIM SICK?

14                  A. HE DID NOT THINK IT WAS MAKING HIM SICK, THAT'S  
15 RIGHT.

16                  Q. IF HE DOUBTED THAT THERE WAS A HEALTH RISK,  
17 WOULD THAT AFFECT HIS ABILITY TO STOP SMOKING?

18                  A. ABSOLUTELY.

19                  MS. WILKINSON: SAME OBJECTION, YOUR HONOR.  
20 SPECULATIVE.

21                  THE COURT: SUSTAINED.

22                  Q. BY MR. PIUZE: WELL, IF HE THOUGHT HE COULD  
23 STOP -- OR IF YOU THOUGHT HE COULD STOP WHEN IT AFFECTED HIS  
24 HEALTH, DO YOU THINK IF THERE WASN'T ANY AFFECT TO HIS HEALTH  
25 PERCEIVED, THAT WOULD PLAY A ROLE, TOO?

26                  A. YES. THE WHOLE ISSUE OF PERCEPTION OF RISK IS



27 REALLY CRITICAL IN TERMS OF MAKING DECISIONS. AND HE -- THE  
28 INFORMATION THAT HE HAD FROM THE SURGEON GENERAL WAS NOT  
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6751

1 SUFFICIENT TO CONVINCE HIM THAT THERE WAS A RISK. AND THAT  
2 IS QUITE COMMON IN THE CONTEXT OF HAVING OTHER SOURCES THAT  
3 SAY THAT THERE MAY NOT BE A RISK, THAT THERE'S A DEBATE ABOUT  
4 IT, THAT IT'S CONTROVERSIAL.

5 MR. PIUZE: I'M GOING TO DO MY BEST TO LET YOU GET ON  
6 THAT AIRPLANE, SO I'M NOT GOING TO ASK ANY MORE QUESTIONS.

7 THE COURT: MS. WILKINSON.

8 MS. WILKINSON: I HAVE -- YOUR HONOR, I HAVE A COUPLE  
9 OF MORE QUESTIONS.

10 THE COURT: I JUST SAID, MS. WILKINSON.

11 MS. WILKINSON: OH, THANK YOU.

12

13 RECROSS-EXAMINATION

14 BY MS. WILKINSON:

15 Q. DR. BENOWITZ, WE WERE TALKING ABOUT CAFFEINE  
16 NOT COMPARED TO HEALTH RISK, BUT THERE ARE THINGS THAT ARE  
17 JUST AS BAD FOR PEOPLE'S HEALTH AS SMOKING, LIKE EATING FATTY  
18 FOODS, RIGHT?

19 A. BAD, BUT NOT AS BAD.

20 Q. WELL, ISN'T IT TRUE THAT OBESITY AND OTHER  
21 RELATED PROBLEMS ARE BECOMING THE NUMBER ONE KILLER IN THE  
22 UNITED STATES?

23 MR. PIUZE: YOUR HONOR, THIS IS BEYOND THE SCOPE, TO  
24 BE SURE.

25 THE COURT: SUSTAINED.

26 MR. PIUZE: SO I OBJECT.

27 THE COURT: I JUST SUSTAINED IT.

28 Q. BY MS. WILKINSON: WHEN YOU WERE TALKING ABOUT  
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6752

1 PUTTING OUT LOW-TAR CIGARETTES WITH FULL-FLAVORED  
2 CIGARETTES --

3 A. YES.

4 Q. -- REMEMBER THAT?  
5 OR FULL-TAR CIGARETTES.  
6 DECAFFEINATED COKE, WHICH WE DON'T HAVE HERE,  
7 OR CAFFEINATED COKE, YOU CAN GET BOTH OF THOSE IN A  
8 SUPERMARKET, CAN'T YOU?

9 A. YES.

10 Q. AND WE DON'T FORCE PEOPLE TO DRINK ONE OR THE  
11 OTHER, DO WE?

12 A. NO.

13 Q. YOU CAN GET HIGH-FAT AND LOW-FAT FOODS RIGHT  
14 NEXT TO EACH OTHER IN THE GROCERY STORE, RIGHT?

15 A. YES.

16 Q. AND WE DON'T MAKE PEOPLE CHOOSE THE LOW-FAT  
17 FOOD, EVEN THOUGH IT MIGHT BE BETTER FOR THEM?

18 A. CORRECT.

19 Q. AND THERE ARE HIGH-TAR CIGARETTES AND  
20 MEDIUM-TAR AND VERY LOW-TAR CIGARETTES, AT LEAST BY THE FTC  
21 METHOD, AVAILABLE ON THE MARKET TODAY, AREN'T THERE?

22 A. YES.

23 Q. THERE ARE CIGARETTES, THE MERIT ULTIMA PRODUCED  
24 BY PHILIP MORRIS, IS ABOUT A 1 MILLIGRAM TAR CIGARETTE,  
25 RIGHT?

26 A. YES.

27 Q. I THINK YOU'VE EVEN TOLD US THERE ARE EVEN  
28 CIGARETTES THAT THEORETICALLY WOULD -- COULD BE LOWER THAN  
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1 THAT, RIGHT, THAT HAVE BEEN AVAILABLE?

2 A. YES.

3 Q. AND PEOPLE CAN CHOOSE TO REDUCE THEIR TAR AND  
4 SMOKE THOSE DIFFERENT BRANDS AT DIFFERENT TIMES IF THEY WANT  
5 TO, RIGHT?

6 A. THEY CAN.

7 Q. THERE'S NO EVIDENCE IN THIS CASE THAT  
8 MR. RELLER EVER CHOSE TO DO THAT, RIGHT?

9 A. THAT'S CORRECT.

10 MS. WILKINSON: THAT'S ALL I HAVE, YOUR HONOR.

11 THE COURT: MR. PIUZE.

12 MR. PIUZE: WITHOUT MY RUNNING UP THERE AND ASKING  
13 FOR GUIDANCE, IN LIGHT OF THESE QUESTIONS, HOW ABOUT A COUPLE  
14 OF QUESTIONS ON LOW-TAR CIGARETTES NOW THAT SHE'S BROUGHT IT  
15 UP AND PUT IT ON THE TABLE, PLEASE?

16 THE COURT: DENIED.

17 MR. PIUZE: NO FURTHER QUESTIONS.

18 THANK YOU VERY MUCH. HAVE A NICE WEEKEND.

19 THE COURT: CAN THIS WITNESS BE EXCUSED, MR. PIUZE?

20 MR. PIUZE: YES.

21 THE COURT: MS. WILKINSON.

22 THANK YOU VERY MUCH FOR COMING.

23 THE WITNESS: THANK YOU.

24 THE COURT: ALL RIGHT, FOLKS. I'LL LET YOU GO FOUR  
25 MINUTES EARLY TODAY.

26 MR. PIUZE: DO YOU WANT TO READ SOME DEPOSITION  
27 TESTIMONY?

28 THE COURT: I WOULD, ACTUALLY. BUT I'M TRYING TO  
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6754

1 HELP ONE OF THE JURORS HERE MAKE IT ON TIME.

2 HOWEVER, TWO IMPORTANT ANNOUNCE- -- WELL,  
3 ANNOUNCEMENT AND AN ORDER. BUT LET ME READ THE ADMONITION  
4 FIRST, BEFORE I FORGET.

5 IT IS: YOU ARE ADMONISHED IT'S YOUR DUTY NOT  
6 TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY  
7 SUBJECT CONNECTED WITH THIS CASE OR TO FORM OR EXPRESS ANY  
8 OPINION THEREON UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

9 I GUARANTEE THAT IF I HAD TIME, I WOULD HAVE  
10 HAD THEM READING DEPOSITION TESTIMONY, BUT I DON'T THINK THEY  
11 COULDN'T HAVE GOTTEN IN PLACE IN TIME. THAT'S NUMBER ONE.

12 NUMBER TWO, YOU'RE ORDERED TO RETURN ON  
13 TUESDAY, JUNE 24TH.

14 A BIT OF NEWS. THERE'S A VERY IMPORTANT EVENT  
15 THAT IS TAKING PLACE ON SUNDAY OF -- THIS COMING SUNDAY, AND  
16 THAT IS MR. SABALBURO'S BIRTHDAY OVER HERE.

17 SO HAPPY BIRTHDAY.

18 THE CLERK: THANK YOU.

19 THE COURT: I WON'T SING OFF KEY FOR YOU.

20 THE CLERK: PLEASE.

21 THE COURT: NO. YOU REALLY DON'T WANT ME TO DO THAT.

22 OH, AND YOU'RE ORDERED TO HAVE A WONDERFUL  
23 WEEKEND.

24 8:30, FOLKS. I KNEW THERE WAS SOMETHING ELSE.

25  
26 (THE FOLLOWING PROCEEDINGS WERE HELD  
27 IN OPEN COURT OUT OF THE PRESENCE  
28 OF THE JURY:)

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6755

1 THE COURT: FOLKS, CAN WE GO TO THE EXHIBITS, PLEASE.

2 MS. WILKINSON: SURE, JUDGE.

3 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE JURY.  
4 STILL IN THE MATTER OF RELLER VERSUS PHILIP MORRIS,  
5 BC 261796.

6 THE RECORD SHOULD REFLECT THAT ALL COUNSEL  
7 PREVIOUSLY STATED ARE PRESENT.

8 DR. LEWIS IS STILL PRESENT.

9 I WANT TO GO OVER THE EXHIBITS THAT WE MARKED  
10 FOR EVIDENCE TODAY.

11 THE FIRST IS 97.

12 MS. WILKINSON: SAME OBJECTIONS.

13 MR. PIUZE: EXCUSE ME, YOUR HONOR. CAN I HAVE JUST  
14 30 SECONDS, PLEASE?

15 THE COURT: YES.

16  
17 (SHORT PAUSE.)

18  
19 THE COURT: 97. I KNOW THAT THE OBJECTIONS ARE STILL  
20 THE SAME.

21 DO YOU WANT 97 IN EVIDENCE, MR. PIUZE?

22 MR. PIUZE: YES.

23 THE COURT: THE OBJECTIONS ARE RESPECTFULLY  
24 OVERRULED. I HAVE CONSIDERED THEM.

25 THERE'S SOMETHING THAT I WANT TO ADD, AND THAT  
26 IS, I DON'T THINK THAT IT'S NECESSARY TO PROVE  
27 ALL -- ALTHOUGH MR. PIUZE WAS TALKING ABOUT THIS, THAT HE  
28 THINKS THERE'S CONSPIRACY WITH THE ATTORNEYS, OR THE  
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6756

1 ATTORNEYS WERE PART OF THE CONSPIRACY. I DON'T THINK THAT'S  
2 NECESSARY.

3 FURTHERMORE, I WANT -- AND AS TO YOUR  
4 STATEMENT, MS. WILKINSON, THAT THERE HAS TO BE ADDITIONAL  
5 EVIDENCE OF --

6 MS. WILKINSON: CRIME/FRAUD.

7 THE COURT: -- THE CRIME/FRAUD.

8 IT STATES IT ON THE FACE OF THE DOCUMENT. SO  
9 IT ISN'T EXACTLY AN ANCILLARY. WHAT IT IS, IT IS NOT  
10 CIRCUMSTANTIAL EVIDENCE.

11 IN ADDITION TO THE REASONS I STATED BEFORE,  
12 97 IS IN EVIDENCE.

13  
14 (EVID. - 97)

15  
16 THE COURT: 98 IS A MEMO FROM -- LOOKS LIKE I WROTE  
17 DANKER TO DU PUIS.

18 MR. PIUZE: YES.

19 MS. WILKINSON: YES, YOUR HONOR.

20 THE COURT: AND IT'S 5-28-59. BESIDES THE FACT THAT  
21 IT'S BEFORE HE STARTED YOUR BRAND, ANY OTHER OBJECTION?

22 MS. WILKINSON: THE ONLY THING I WOULD SAY, COULD WE  
23 HAVE A NEW COPY MADE BY MR. PIUZE SO YOU CAN'T READ THROUGH  
24 WHAT'S BLACKED OUT?

25 THE COURT: THAT'S FAIR.

26 MS. WILKINSON: BEFORE IT GOES BACK TO THE JURY.

27 THE COURT: OKAY. PLEASE DO THAT. THAT'S FAIR.

28 MS. WILKINSON: THANK YOU.  
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6757

1 (EVID. - 98)

2  
3 THE COURT: 99, AUGUST 26, '59 LETTER, AND AGAIN,  
4 THAT'S PRIOR TO WHEN HE STARTED SMOKING.

5 ANYTHING ELSE?

6 MS. WILKINSON: THAT'S IT, YOUR HONOR.  
7 THE COURT: YOUR OBJECTION IS NOTED AND RESPECTFULLY  
8 OVERRULED.

9  
10 (EVID. - 99)

11  
12 THE COURT: 100 IS A MEMO FROM DUNN TO --

13 MS. WILKINSON: WAKEHAM.

14 THE COURT: THANK YOU.

15 -- DATED FEBRUARY 19TH, 1969.

16 MS. WILKINSON: I DON'T THINK I OBJECT.

17 THE COURT: THAT'S RECEIVED. 100 IS IN EVIDENCE.

18  
19 (EVID. - 100)

20  
21 THE COURT: 101, MOTIVES AND INCENTIVES IN CIGARETTE  
22 SMOKING.

23 MS. WILKINSON: NO OBJECTION.

24 THE COURT: 101 IS RECEIVED INTO EVIDENCE,

25  
26 (EVID. - 101)

27  
28 THE COURT: 102, A 5-24-72 MEMO FROM -- THAT'S THE  
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6758

1 TIG, OR TI -- I'M SORRY -- TI.

2 MS. WILKINSON: NO. IT IS A PHILIP MORRIS DOCUMENT,  
3 YOUR HONOR.

4 THE COURT: IT'S -- OKAY.

5 MS. WILKINSON: SAME OBJECTIONS.

6 THE COURT: THEY ARE NOTED AND RESPECTFULLY  
7 OVERRULED.

8  
9 (EVID. - 102)

10  
11 THE COURT: 103, A DECEMBER 6, '78 MEMO FROM DUNN TO  
12 OSDENE.

13 ANY OBJECTION?

14 MS. WILKINSON: NO.

15 THE COURT: 103 IS RECEIVED INTO EVIDENCE.

16  
17 (EVID. - 103)

18  
19 THE COURT: 104 IS -- THIS IS WHAT WE HAD SEVERAL  
20 ATTEMPTS ON THIS ONE, BUT IT FINALLY IS THE SEPTEMBER 19TH, I  
21 THINK I WROTE.

22 MS. WILKINSON: SEPTEMBER 9TH, 1980.

23 THE COURT: 9TH, OKAY. 1980 MEMO FROM KLOEPFER TO  
24 KNOPIK.

25 MR. PIUZE: KLOEPFER LETTER?

26 THE COURT: RIGHT.

27 ANY OBJECTION?

28 MS. WILKINSON: YES. THIS IS THE ONE REITERATING  
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6759

1 LEGALESE FROM SHOOK HARDY. I OBJECT TO THAT, YOUR HONOR.

2 THE COURT: THIS IS ONE --

3 MS. WILKINSON: IT'S FROM TI, WHERE YOU  
4 BLOCKED -- BLACKED OUT SHOOK HARDY, BUT I DON'T THINK ANY OF  
5 THIS -- IT'S HEARSAY WITHIN HEARSAY AND ATTORNEY-CLIENT.

6 THE COURT: YOU DON'T HAVE A STANDING TO CLAIM  
7 ATTORNEY-CLIENT PRIVILEGE FOR TI.

8 MS. WILKINSON: WAIT. CAN I ASK YOU A QUESTION ABOUT

9 THAT, JUDGE?

10 THE COURT: YES.

11 MS. WILKINSON: BECAUSE YOU'RE SAYING THAT WE'RE AN  
12 AGENT. TI IS OUR AGENT. I MEAN, WE CAN'T HAVE IT BOTH WAYS,  
13 EITHER THEIR STATEMENT ARE OUR STATEMENTS, BECAUSE YOU'RE  
14 RULING THAT THEY COME IN BECAUSE THEY'RE OUR AGENT AND IF SO,  
15 WE DO HAVE A PRIVILEGE, THEN, WITH THEIR -- THE LEGAL ADVICE  
16 THEY GOT.

17 THE COURT: NO, YOU DON'T. SIMPLY BECAUSE SOMEBODY  
18 IS AN AGENT FOR SOME THINGS DOESN'T MAKE THEM AN AGENT FOR  
19 OTHER THINGS. YOU DON'T HAVE STANDING TO OBJECT ON THAT  
20 GROUND.

21 ALL RIGHT. 104 IS IN EVIDENCE.

22  
23 (EVID. - 104)

24  
25 MS. WILKINSON: I SHOULD JUST HAVE SAID THAT I THINK  
26 352 APPLIES TO THAT LAST EXHIBIT.

27 THE COURT: I CONSIDERED THAT EARLIER ON MY OWN, AND  
28 I DISAGREE WITH YOU. I THINK THAT IT'S MORE PROBATIVE THAN  
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6760

1 PREJUDICIAL, NOT LIKELY TO CONFUSE THE JURORS. IT'S NOT AN  
2 UNDUE WASTE OF TIME.

3 105. ROPER PROPOSAL.

4 ANY OBJECTION, ROPER PROPOSAL, 105?

5 MS. WILKINSON: YOU ALREADY LET THAT IN.

6 THE COURT: THIS IS THE BOARD.

7 MS. WILKINSON: RIGHT. I HAVE THE SAME OBJECTION,  
8 AND YOU'VE ALREADY LET IT IN.

9 THE COURT: OKAY. YOUR OBJECTION IS NOTED AND  
10 OVERRULED.

11  
12 (EVID. - 105)

13  
14 THE COURT: NO. 106, PREVIOUSLY MARKED AS 733.1, A  
15 MEMO ON THE SURGEON GENERAL'S REPORT DATED JANUARY 29TH, '64  
16 FROM WEISSMAN TO CULLMAN.

17 MS. WILKINSON: SAME OBJECTIONS.

18 THE COURT: THOSE ARE NOTED AND RESPECTFULLY  
19 OVERRULED.

20  
21 (EVID. - 106)

22  
23 THE COURT: 107, THE FAGERSTROM TOLERANCE  
24 QUESTIONNAIRE.

25 ANY OBJECTION?

26 MR. PIUZE: NO.

27 THE COURT: YOU WANT IT IN?

28 MS. WILKINSON: YES, YOUR HONOR.  
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6761

1 THE COURT: OKAY.

2 MR. GARDNER: SHE WAS TALKING ABOUT THE FAGERSTROM.

3 MS. WILKINSON: THE FAGERSTROM.

4 THE COURT: I THOUGHT THAT WAS PLAINTIFF'S.

5 MS. WILKINSON: YOU'RE RIGHT. I HAVE NO OBJECTION TO  
6 THAT OR THE DSM MANUAL, WHICH IS NEXT.

7 THE COURT: 107 IS IN EVIDENCE.

8 108, THE DSM-IV MANUAL IS IN EVIDENCE.

9  
10 (EVID. - 107, 108)

12 THE COURT: 109, THE TOBACCO ADDICTION QUESTIONNAIRE.  
13 ANY OBJECTION, MR. PIUZE?  
14 MR. PIUZE: NO.  
15 THE COURT: 109 IS RECEIVED INTO EVIDENCE.  
16  
17 (EVID. - 109)  
18  
19 THE COURT: 110, THE CHART BY DR. BENOWITZ.  
20 ANY OBJECTION, MR. PIUZE?  
21 MR. PIUZE: NO.  
22 MS. WILKINSON: CAN I ASK ONE THING, YOUR HONOR?  
23 JUST TO MAKE IT EASY FOR YOU AND THE JURORS,  
24 CAN WE MAKE 110 THE RECORD AND GIVE THE SMALL 8 BY 11 A  
25 DIFFERENT NUMBER, OR DO YOU WANT TO JUST HAVE THIS SINCE IT'S  
26 LITERALLY A REPEAT BE 110-A?  
27 THE COURT: NO. IT'S EASIER FOR MR. SABALBURO TO  
28 HAVE SEPARATE NUMBERS.  
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6762  
1 SO 110 IS RECEIVED INTO EVIDENCE.  
2 I'M MARKING THE SMALL ONE AS 113.  
3 THAT'S -- AGAIN -- THAT'S A SMALL VERSION OF DR. BENOWITZ'S  
4 CHART.  
5 YES.  
6 MS. WILKINSON: YES. THANK YOU.  
7  
8 (EVID. - 110)  
9 (I.D. 113 - SMALL VERSION OF 110)  
10  
11 THE COURT: 113 IS RECEIVED INTO EVIDENCE.  
12  
13 (EVID. - 113)  
14  
15 THE COURT: 111 IS THE BOOK ON SMOKING BEHAVIORS.  
16 MR. GARDNER: SHE'S GOT A COPY.  
17 MS. WILKINSON: I'VE GOT A COPY, JUST TO MAKE IT  
18 EASIER.  
19 MR. PIUZE: FINE.  
20 MS. WILKINSON: THANK YOU.  
21 THE COURT: 111 IS RECEIVED INTO EVIDENCE.  
22  
23 (EVID. - 111)  
24  
25 THE COURT: 112, THE RELLER TIME LINE.  
26 MR. PIUZE: I GUESS I NEED A QUERY HERE. SOMEPLACE  
27 THERE'S A DIFFERENCE BETWEEN EVIDENCE AND DEMONSTRATIVES.  
28 FROM PAST --  
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6763  
1 THE COURT: THERE IS.  
2 MR. PIUZE: RIGHT.  
3 FROM PAST CONVERSATIONS, I KNOW DEMONSTRATIVES  
4 ARE GOING BACK INTO THE JURY ROOM, AND I DON'T HAVE A PROBLEM  
5 WITH THAT.  
6 MS. WILKINSON: THAT'S WHY I TRY NOT TO BE -- PUT ANY  
7 ARGUMENT ON THE TOP. THAT'S WHERE I THOUGHT WE DRAW THE  
8 LINE, IS WHEN WE START PUTTING ARGUMENTATIVE TITLES OR  
9 CHARACTERIZATIONS IN, THEY BECOME ARGUMENT.  
10 THE COURT: ANY OBJECTION, MR. PIUZE?  
11 MR. PIUZE: LET ME CONFER HERE FOR SECOND.  
12  
13 (SHORT PAUSE.)  
14

15 MR. PIUZE: I HAVE NO OBJECTION. AND I'M SORRY, I  
16 JUST WASTED EVERYBODY'S TIME.  
17 MS. WILKINSON: NO PROBLEM.  
18 THE COURT: NO, YOU DIDN'T.  
19 112 IS RECEIVED INTO EVIDENCE.  
20  
21 (EVID. - 112)  
22  
23 THE COURT: ALL RIGHT. WHAT CAN I EXPECT FOR TUESDAY  
24 IN HERE?  
25 I HAVE THE --  
26 MR. PIUZE: IT WAS CUMMINGS, AND NOW I'M TOLD  
27 CONCEIVABLY HE MAY NOT BE UNTIL WEDNESDAY, IN WHICH CASE, IT  
28 WILL BE POLLAY. BUT I'LL FIND OUT LATER TODAY, AND I'LL LET  
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6764  
1 MY OPPONENTS KNOW TODAY.  
2 MS. WILKINSON: AND CAN WE TALK ABOUT THE REST OF THE  
3 WEEK, JUST SO WE KNOW THE OVER --  
4 MR. PIUZE: THE FIRST TWO DAYS WILL BE THOSE TWO  
5 PEOPLE.  
6 MS. WILKINSON: OKAY.  
7 MR. PIUZE: AND AFTER THAT, I'M STILL NOT ABSOLUTELY  
8 POSITIVE. BUT WE HAVE THIS ONE DEPOSITION TO FINISH, AND  
9 I'LL BE GLAD TO TALK ABOUT IT MORE LATER. I'VE SAID MAYBE  
10 TREATING DOCTORS AND MAYBE RELLER'S DEPOSITION. CIVILIANS  
11 ARE GOING TO START COMING.  
12 MS. WILKINSON: THANK YOU.  
13 THANK YOU, YOUR HONOR.  
14 THE COURT: TODAY, PLAINTIFF USED 2 HOURS AND 35  
15 MINUTES, AND DEFENDANTS 1 HOUR AND 27 MINUTES.  
16 YOU WANT TO LOOK AT THE CLOCKS AND CHECK?  
17 HERE IT IS FOR EVERYBODY.  
18 ANYTHING ELSE?  
19 DO I HAVE TO READ ANYTHING OVER THE WEEKEND  
20 THAT RELATES TO YOUR CASES, FOLKS?  
21 MR. PIUZE: THE QUESTION IS WHETHER I'M GOING TO GET  
22 TO READ SOMETHING THAT RELATES TO DESTRUCTIVE TESTING THAT  
23 WAS DONE ON THE TISSUE BLOCK.  
24 THE COURT: THAT IS TRUE.  
25 WHAT'S THE ANSWER TO THAT, MR. GARDNER?  
26 MR. GARDNER: THE COURT ORDERED ME TO FIND OUT  
27 WHETHER THERE'D BE ANY DESTRUCTIVE TESTING DONE.  
28 THE COURT: RIGHT.  
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6765  
1 MR. GARDNER: AND THE PERSON THAT COULD ANSWER THAT  
2 DEFINITELY IS ON VACATION, BUT I'M WILLING -- I'VE GOT A  
3 99 PERCENT SURETY THAT THE ANSWER IS NO.  
4 THE COURT: OKAY. IF IT CHANGES --  
5 MR. GARDNER: I WILL LET THE COURT KNOW.  
6 THE COURT: MR. PIUZE NEEDS TO KNOW ASAP.  
7 MR. GARDNER: ABSOLUTELY.  
8 THE COURT: IF YOU FIND OUT ON SUNDAY, MR. PIUZE  
9 NEEDS TO KNOW ON SUNDAY, BECAUSE HE WON'T SEE YOU AGAIN TILL  
10 TUESDAY.  
11 MR. PIUZE: I'LL DEFER MONDAY MORNING; THAT WILL BE  
12 ACCEPTABLE.  
13 THE COURT: FINE. MONDAY MORNING.  
14 MR. GARDNER: I DON'T KNOW IF THIS PERSON GETS BACK,  
15 BUT AGAIN, I AM 99 PERCENT SURE.  
16 THE COURT: OKAY. HAVE A GREAT WEEKEND, FOLKS.  
17 MR. PIUZE: YOU, TOO, YOUR HONOR.

18 THE COURT: THE ANSWER IS STILL, I DON'T HAVE ANY  
19 READING FROM YOU FOLKS TO DO OVER THE WEEKEND, NO MOTIONS IN  
20 LIMINE?  
21 MR. GARDNER: I'M NOT SURE.  
22 MS. WILKINSON: NOT THAT YOU NEED TO DO RIGHT NOW,  
23 YOUR HONOR.  
24 MR. GARDNER: OKAY.  
25 MR. PIUZE: WELL, YOUR HONOR, IF YOU'RE GETTING  
26 LONELY, THERE'S 17 TOBACCO LAWYERS IN THE BUILDING. WE CAN  
27 RE-CREATE SOME MORE MOTIONS IN LIMINE.  
28 THE COURT: I'M NOT LONELY. I'M GOING TO DOWNTOWN  
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6766  
1 WITH MY BEST FRIEND TO VISIT ANOTHER FRIEND OF OURS IN  
2 SAN DIEGO AND WATCH THE MIDNIGHT CATECHISM.  
3  
4 (AT 2:37 P.M., AN ADJOURNMENT WAS TAKEN  
5 UNTIL TUESDAY, JUNE 24, 2003, AT 8:30 A.M.)  
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